Agenda Date: 12/2/05
Agenda Item: 4B

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT PETITION OF VERIZON COMMUNICATIONS INC. AND MCI, INC. FOR APPROVAL OF MERGER)

ORDER OF APPROVAL

BPU DOCKET NO. TM05030189

BY THE BOARD:[1]

This Decision and Order memorializes action taken by the Board of Public Utilities ("Board") at its December 2, 2005 public agenda meeting regarding the Board's approval, with conditions, of the Joint Petition of Verizon Communications, Inc. and MCI, Inc for Approval of Merger.

BACKGROUND AND PROCEDURAL HISTORY

On February 14, 2005, Verizon Communications Inc. ("Verizon") and MCI, Inc. ("MCI") the Joint Petitioners in this matter ("petitioners") entered into an Agreement and Plan of Merger ("Merger Agreement"). On March 3, 2005, petitioners filed a Joint Petition with the Board for approval of their Agreement and Plan of Merger, pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, as well as N.J.A.C. 14:1-5.14.

According to the Joint Petition, Verizon is a Delaware corporation and is the parent of telephone operating company subsidiaries, including Verizon New Jersey, Inc. ("Verizon NJ"), that provide communications services on a regulated and unregulated basis in 29 states, serving 53 million access lines. These include exchange, long-distance and exchange access services. Verizon NJ provides regulated telecommunication services in New Jersey, and employs approximately 14,900 people in this State. In 2004, Verizon had annual operating revenues of approximately $71 billion.

[1] At the time of the December 2, 2005 vote on this matter, the Board of Public Utilities was comprised of the three signatories herein and Commissioner Jack Alter. Commissioner Alter has since retired from the Board.

According to petitioners, MCI is a Delaware corporation with its principal office in Ashburn, Virginia. MCI and its subsidiaries provide telecommunications services on a regulated and unregulated basis throughout the United States and in several foreign countries. These include business-data and Internet services to a wide variety of business and government customers. MCI subsidiaries also provide consumer services, such as interstate long-distance, intrastate toll and competitive local exchange services, in New Jersey. In 2004, MCI had annual operating revenues of approximately $21 billion. MCI and/or its subsidiaries employ approximately 800 people in New Jersey.

Petitioners assert that the proposed transaction is a merger of Verizon and MCI, the parent holding companies, that will result in MCI becoming a subsidiary of Verizon. The MCI New Jersey subsidiaries will remain subsidiaries of MCI, and the authorizations currently held by those MCI New Jersey subsidiaries will continue to be held by the respective entities.

Petitioners state that until the transaction is complete, petitioners and their subsidiaries will continue to operate as individual entities. The acquisition will not occur until all necessary governmental and regulatory approvals and reviews have been completed. The Merger Agreement does not call for the merger of any assets, operations, lines, plants, franchises or permits of the MCI subsidiaries with the assets, operations, lines, plants, franchises or permits of any Verizon entity. To the extent that any such reorganization might be made at a later date, it will, according to petitioners, be made in the normal course of business and subject to such regulatory approvals as may be required. The Merger Agreement also does not call for any change in the rates, terms or the conditions for the provision of any communications services provided in New Jersey. To the extent any such changes might be made at a later date, they too will, according to petitioners, be subject to such regulatory approvals as may be required. Petitioners state that as a result, the transaction will not affect the regulatory authority of the Board over any of petitioners' regulated subsidiaries, nor, according to petitioners, will it have any immediate impact on the services that those subsidiaries provide in New Jersey. Petitioners state that their State-regulated subsidiaries will continue to meet all of their obligations under the Board's rules, regulations and orders.

A prehearing conference in this matter was held on June 6, 2005 and the Board's Prehearing Order was subsequently issued on June 8, 2005. The Board stated therein that it would consider the impact of the merger on competition, the rates of ratepayers affected by the acquisition of control, the employees of the affected public utility or utilities, and the provision of safe and adequate utility service at just and reasonable rates. Commissioner Frederick F. Butler was designated presiding officer over the proceeding.

On April 18, 2005, Verizon filed motions to permit the appearance *pro hac vice* of Sherry F. Bellamy and Robert P. Slevin. On May 23, 2005, Verizon further filed a motion to permit the appearance *pro hac vice* of Richard A. Chapkis. On July 11, 2005 the Board granted Verizon's *pro hac vice* motions.

Qwest Communications Corporation ("Qwest") filed a motion seeking the right to intervene in the proceeding on May 26, 2005. Commissioner Butler granted Qwest intervenor status by Provisional Order dated June 8, 2005.

On June 14, 2005, Broadview Networks, Inc., DIECA Communications, Inc. d/b/a Covad Communications Company, CTC Communication Corp. and XO Communications Services Inc. (collectively "Competitive Carrier Group" or "CCG") filed a joint motion to intervene in this matter. On June 15, 2005, Conversent Communications of New Jersey, LLC ("Conversent") also filed a motion seeking the right to intervene in this proceeding. Commissioner Butler granted CCG and Conversent intervenor status by Provisional Order dated June 28, 2005.

On June 20, 2005, the Division of the Ratepayer Advocate ("RPA") filed a motion for reconsideration of the Board's Prehearing Order and sought an extension of the hearing schedule. On June 23, 2005, and June 30, 2005, respectively, the CCG and Qwest filed a letter in support of the RPA's motion. On June 23, 2005, petitioners filed their opposition to the motion and in a footnote expressed the view that the Board's schedule permitted them until July 29, 2005, to answer the RPA's June 17, 2005 discovery requests.

On July 6, 2005, the Board denied the RPA's motion for reconsideration and affirmed that discovery should be completed by July 29, 2005. The Board also ordered Verizon to adhere to the basic discovery response deadlines set forth in N.J.A.C. 1:1-10.4(c) and respond to the RPA's first set of discovery requests, and any other request served on Verizon on or before June 17, 2005, by no later than July 11, 2005.

Petitioners and the RPA filed pre-filed testimony on July 8, 2005 and rebuttal testimony on August 19, 2005. On July 18, 2005, Qwest filed motions to permit the appearance *pro hac vice* of Thomas W. Snyder and Barbara J. Brohl, which motions were granted by the Board on August 10, 2005.

On July 20, 2005, the RPA requested clarification as to whether or not the discovery would continue until August 26, 2005. On July 22, 2005, petitioners responded by citing to the Board's July 6, 2005 Order indicating a discovery cut-off date of July 29, 2005, and requested that Staff confirm petitioner's understanding of the procedural schedule. On August 12, 2005, the RPA filed a Motion for Clarification on the discovery issue. On August 22, 2005, petitioners responded by opposing the RPA's motion. By Order dated August 30, 2005, the Board denied the RPA's Motion for Clarification.

On September 1, 2005, Qwest filed a Motion to Compel discovery responses from petitioners. On September 7, 2005, petitioners filed their opposition to the Motion. On September 8, 2005, Qwest filed a supplemental position and reply to petitioner's opposition. By Provisional Order dated September 9, 2005, Commissioner Butler granted in part and denied in part Qwest's Motion and ordered that petitioners respond by no later than 12:30 p.m., September 15, 2005.

On September 9, 2005, the RPA filed a Motion to Compel discovery responses from petitioners, and to compel petitioners to designate a person responsible for each discovery response they provided to the RPA. By Provisional Order dated September 16, 2005, Commissioner Butler granted in part and denied in part the RPAs Motion, ordering Verizon to disclose the identity of the persons responding to the discovery requests. By provisional Order dated September 19, 2005, Commissioner Butler granted the *pro hac vice* motion submitted by Conversent.

The parties held two public hearings in this matter. The first was held on September 13, 2005 in Somerville, New Jersey. The second was held on September 14, 2005 in Gibbstown, New Jersey. Evidentiary hearings commenced on September 19, 2005, and concluded on September 21, 2005. Witnesses Paul B. Vasington, Sally McMahon and Dr. William E. Taylor testified on behalf of petitioners. No other witnesses presented live testimony. On September 27, 2005, pursuant to discussions held during said hearings, the RPA filed three written cross-examination questions directed toward the witness for Qwest, Pamela Stegora Axberg, and one additional question directed at all intervenors. In a written response filed on September 29, 2005, petitioners argued that these questions constituted improper "friendly" cross-examination which should not be permitted. In a written reply dated September 30, 2005, the RPA stated its disagreement with petitioners' characterization of the RPA interrogatories, and further stated that they were proper. Also on September 30, 2005, petitioners filed a response to the RPA's reply brief in support of petitioners' motion to disallow the RPA's cross-examination. The RPA then moved to strike petitioners' most recent response on procedural grounds. By Provisional Order dated October 3, 2005, Commissioner Butler declined to striking any filings received in connection with the motion, and permitted the RPA to pose two of its cross-examination interrogatories, while striking two others.

Initial Briefs[2] were filed on October 14, 2005 by Petitioners, Qwest, CCG and the Ratepayer Advocate. On the same date Qwest filed a letter motion seeking the admission of several documentary exhibits into the record. Reply briefs were filed by all parties on October 28, 2005.

On November 3, 2005, the RPA filed a supplemental letter reply brief in response to merger conditions by the Federal Communications Commission ("FCC") in its approval of petitioners' proposed merger, and the stipulation reached between petitioners and the U.S. Department of Justice ("DOJ") in connection with the same matter. This letter was followed on November 4, 2005 by similar filings by the CCG and Qwest. On November 14, 2005, petitioners responded with a Motion to Strike the aforementioned supplemental filings. In the alternative, petitioners submitted and sought Board consideration of argument in response to the RPA and intervenor filings. On November 16, 2005, the RPA submitted reply comments to petitioners' Motion to Strike.

Also on November 4, 2005, Qwest filed a Motion to Strike a portion of petitioners' reply brief dealing with testimony in a state proceeding outside New Jersey. Qwest requested in the alternative that the Board permit Qwest's additional comment

[2] Initial Briefs are referred to herein as "I" and Reply Briefs as "R." Both are preceded by the abbreviated name of the filing party, as follows: Petitioners = "Pet." Ratepayer Advocate = "RPA" Competitive Carrier Group = "CCG" Qwest Communications = "Qwest" Conversent Communications = "Conv."

(incorporated in its moving papers) to be included in the record On November 14 2005, petitioners filed their opposition to Qwest's motion.

At its regularly scheduled agenda meeting of December 2, 2005, the Board voted to deny all pending motions to strike and to admit into evidence all supplemental filings, as well as the documents offered into evidence by Qwest. The Board also voted to ratify the provisional orders issued by Commissioner Butler in the course of the proceeding. The Board further voted to approve the proposed merger with certain conditions, as more fully set forth below.

STATUTORY CRITERIA

N.J.S.A. 48:2-13 provides the Board with jurisdiction and control over public utilities, defined to include "every copartnership, association, corporation or joint stock company...that now or hereafter may own, operate, manage or control within this State any...telephone or telegraph system, plant or equipment for public use, under privileges granted or hereafter to be granted by this State or any political subdivision thereof."

Pursuant to N.J.S.A. 48:3-10, "[n]o public utility incorporated under the laws of this State shall sell, nor shall any such public utility make or permit to be made upon its books any transfer of any share or shares of its capital stock, to any other public utility, unless authorized to do so by the board. Nor shall any public utility incorporated under the laws of this State sell any share or shares of its capital stock or make or permit any transfer thereof to be made upon its books, to any corporation, domestic or foreign, or any person, the result of which sale or transfer in itself or connection with other previous sales or transfers shall be to vest in such corporation or person a majority in interest of the outstanding capital stock of such public utility corporation unless authorized to do so by the board. Every assignment, transfer, contract or agreement for assignment or transfer, by or through any person or corporation to any corporation or person in violation of any of the provisions hereof shall be void and have no effect..."

N.J.S.A. 48:2-51.1 provides, in pertinent part: "[n]o person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, the acquisition of proxies to vote for the election of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of the ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates."

As discussed more fully below, petitioners believe that their proposed merger satisfies the aforementioned statutory criteria, and that the Board should unconditionally approve their petition. In contrast, the RPA and the three intervenors in this proceeding view the merger as, *inter alia*, harmful to competition in New Jersey's telecommunications markets. The RPA also maintains that petitioners have failed to demonstrate that the merger will not impact negatively on rates, service quality and employment levels in the State. The RPA and intervenors all contend that the merger petition should either be denied or approved with conditions designed to remedy the competitive harms caused, in their view, by the joining of these two telecommunications companies.

STANDARD OF REVIEW

PETITIONERS

According to petitioners, the Board should apply the "no harm" standard of merger review, which requires the Board to determine whether the merger would adversely affect any of the four statutory criteria in question. Pursuant to this standard, the Board would approve the merger absent evidence of harm in any of the four categories. Petitioners state that the Board has employed this standard consistently in previous telecommunications merger reviews, with one exception, discussed below, and in the vast majority of other utility merger proceedings. Petitioners contend that in prior proceedings the Board has recognized that the "no harm" standard is reasonable and more than sufficient to ensure the continuation of safe, adequate, and proper service at reasonable rates. Petitioners also maintain that in past telecommunications merger proceedings the Board has repeatedly rejected arguments by the RPA that a higher "positive benefits" standard should be applied.

Petitioners acknowledge that in its decision approving the merger of SBC and AT&T, I/M/O the Joint Petition of SBC Communications, Inc. and AT&T Corp., Together With its Certificated Subsidiaries for Approval of Merger, Order, Docket No. TM05020168 (October 4, 2005), the Board recognized that, although it has historically applied a "no harm" standard, it may also consider the circumstances of each case when establishing the standard of review. In that case, the Board found that the petitioners were required to show that the transaction did not harm any of the four areas identified in N.J.S.A. 48:2-5.1, and, in the aggregate, that the merger resulted in an affirmative public benefit. However, petitioners urge the Board to apply the “no harm” standard to this transaction. Petitioners assert that, unlike the SBC/AT&T transaction, in which the acquiring company was based in out-of-state with little presence in New Jersey and the acquired company was one of New Jersey's largest employers, the circumstances of the Verizon/MCI transaction are reversed. Petitioners therefore contend that the “no harm” test makes more sense where a New Jersey-based utility is the entity making the acquisition, and where, as here (according to petitioners) competitive markets can effectively protect customers and other carriers from any adverse effects of the merger.

RPA

The RPA asserts that petitioners should be required to demonstrate that positive benefits will flow to customers as a result of the proposed change of ownership, in addition to having a minimal or no adverse impact on the criteria used in the evaluation of the transaction. The RPA asserts that the Board adopted this standard in its review of the pending PSE&G/Exelon merger (Docket No. EM05020106).

QWEST

Qwest also notes that the Board employed a so-called "positive benefits" test in its review of the AT&T/SBC merger, and should do so again in the instant case. Qwest points out that the Board considers such circumstances as the disparate regulatory frameworks governing different industries and companies as well as the magnitude of the proposed transaction and its potential effect on ratepayers in determining the appropriate standard of review. Qwest opines that Verizon, as the incumbent local telephone company in the vast majority of the State, is at least as intricately involved in the interests of New Jersey as AT&T. Qwest also argues that Verizon remains more heavily regulated by the Board than AT&T was at the time the Board reviewed the AT&T/SBC merger. It follows, according to Qwest, that the "positive benefits" standard is the appropriate and proper standard of review in this proceeding.

CONVERSENT

Conversent maintains that the unique circumstances of this merger review compel a heightened level of scrutiny, even compared to that employed by the Board in the recent SBC/AT&T merger review. According to Conversent, in the instant case the dominant incumbent carrier in New Jersey, Verizon, proposes to acquire one of its major New Jersey competitors, MCI, in a local services market that was already consolidated to begin with. This has, in Conversent's view, led to unique circumstances, in which the public interest can only be protected by means of a heightened positive benefits standard which would require petitioners to show that positive benefits would result to all four statutory criteria at issue under State law.

CCG

According to CCG, the proposed merger between Verizon and MCI requires the most stringent of reviews, because, in CCG's view, it involves the dominant incumbent local exchange carrier and one of the two largest competitive local exchange carriers operating in New Jersey. CCG therefore recommends that the Board require petitioners to show that the proposed merger will benefit at least one of the statutory criteria, while harming none.

DISCUSSION

As previously noted by the Board in its SBC/AT&T Order, neither of the statutes under which the Board exercises review of this merger, N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, specifies the standard of review the Board should use in evaluating a share transfer or determining merger's impact of the four enumerated criteria referenced above.[3] Nor is there any other statutory requirement under New Jersey law that the Board use a particular standard of review in such proceedings.

In its past reviews of proposed mergers, the Board evaluated the individual circumstances of each case in order to determine which standard of review ("no harm" or "positive benefits") to employ.[4] Even in cases in which the Board has utilized a "no harm" standard, it has considered the appropriate treatment of an acquisition's claimed benefits, including, but not limited to, merger savings, and has examined the degree to which ratepayers would share in those benefits.[5] Thus, the Board has conducted a fact-sensitive inquiry, on a case-by-case basis, to determine the degree and kind of showing that must be demonstrated in a given merger proceeding.[6]

In its recent analysis of the SBC/AT&T merger, the Board noted that AT&T's ties to New Jersey, including the in-state presence of several large facilities and the company's long history of employing large numbers of New Jersey citizens, exceeded those of a typical state. Thus, a heightened standard of review, requiring a positive benefit to arise from the transaction, was appropriate.[7] The Board must make a similar assessment in the instant case. To this end, we note that Verizon is the largest incumbent local exchange carrier ("ILEC") in the State, controlling by far the largest portion of the local wireline market. As an ILEC it is subject to a higher level of Board regulation than its competitors in the local exchange market. MCI is also a significant local service competitor to Verizon in New Jersey. Thus, the potential impact of the transaction on this State and its ratepayers far exceeds that which would result from the combination of a smaller ILEC and competitive local exchange carrier ("CLEC"), or two CLECs. Balancing these considerations, we find that, at a minimum, the size and market posture of each petitioner herein potentially raises significant concerns regarding competition which require the Board to impose the "positive benefits" standard in this proceeding. Therefore, as in the recent SBC/AT&T case, in order to receive Board approval of their transaction, petitioners must demonstrate not merely that the merger does no harm to any of the four enumerated criteria, but that on aggregate, the merger would produce an affirmative public benefit. Said another way, petitioners in this case must show, at a minimum, that some positive benefit would result from the merger with respect to at least one of the four criteria, and that no harm would result with respect to the other

---

[3] I/M/O the Joint Petition of SBC Communications, Inc. and AT&T Corp., Together With its Certificated Subsidiaries for Approval of Merger, Order, Docket No.TM05020168 (October 4, 2005) ("SBC/AT&T Order") at 5.

[4] See, e.g., I/M/O Petition of NUI Utilities, Inc., (d/b/a Elizabethtown Gas Company) and AGL Resources, Inc. for Authority Under N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 for a Change in Ownership and Control, Order, Docket No. GM04070721 (November 17, 2004) at 5-6; I/M/O Petition of Atlantic City Electric Company and Conectiv, Inc. for Approval of a Change in Ownership and Control, Order, Docket No. EM97020103 (January 7, 1998) ("Conectiv") at 5-6; I/M/O Consideration of the Joint Petition of Orange and Rockland Utilities, Inc. for Approval of the Agreement and Plan for Merger and Transfer of Control, Order, Docket No. EM98070433 (April 1, 1999) ("RECO") at 5.

[5] See e.g., Conectiv at 6-8; See also, N.J.A.C. 14:1-5.14(a)(10) (requiring petitions for approval of a merger or consolidation of a New Jersey utility with that of another public utility to contain information regarding "[t]he various benefits to the public ... which will be realized as the result of the merger.")

[6] Ibid.

[7] SBC/AT&T at 5-6

three. While we are aware of the potential magnitude of the changes sought by petitioners, we find that such heightened scrutiny will sufficiently protect the interests of all stakeholders in this process, and that no more rigorous standard of review by this Board is necessary. Thus, we reject the higher standard of review proposed by Conversent, which would require petitioners to show positive benefits in all four areas of review under N.J.S.A. 48:2-51.1.

With this standard in mind, we now turn to the facts and opinions in evidence in this case to determine whether petitioners have made a sufficient showing with respect to the statutory four criteria to permit this Board to approve the proposed merger.

IMPACT OF MERGER ON STATUTORY CRITERIA

1. Merger's Impact on Competition

PARTIES' POSITIONS

Petitioners

Petitioners contend that the merger will benefit both enterprise and mass market customers in New Jersey, and that it will not harm competition in either of these markets. According to petitioners, the communications industry is in the midst of a transformation that is forcing wireline service providers to meet new competitive challenges. Petitioners believe that this merger responds to those industry trends and competitive challenges by bringing together two companies with complementary assets. MCI contends that it has a significant base of large enterprise customers (both private and public) and an Internet Protocol ("IP") based national and international network, while Verizon states that it serves only a limited number of large enterprise customers and lacks a substantial Internet backbone. Petitioners maintain that Verizon's relative strength is in the provision of services to residential and small business customers using its local network and in its investment in wireless services, which MCI does not provide. The combination of these complementary assets will, in petitioners' view, create a stronger competitor, better able to deliver a full suite of high quality services to businesses and consumers than either company could provide alone.

According to petitioners, the combined company will be in a strong financial position to invest in the existing IP network. They further state that Verizon has already committed to invest $2 billion in capital nationally to enhance MCI's network and information technology platforms. Petitioners contend that the merger will allow the combined company to develop and deploy new services more rapidly than either company could on its own, thus benefiting New Jersey customers.

Petitioners also state that MCI's IP backbone, together with Verizon's wireless network, creates an infrastructure to deploy mobile IP devices, and that the merger will enable customers to obtain in a single transaction the capabilities of both networks. Petitioners further contend that the merger will allow Verizon to extend its IP-based service offerings geographically. In fact, petitioners maintain that their desire to provide more attractive products and services to enterprise customers using such capabilities and to respond to the increasingly intense competition in this segment is the principal rationale for this transaction.

According to petitioners, the merger will also benefit government customers. Petitioners contend that both large business and government customers demand complex, integrated packages of voice and data services, typically required at multiple locations and with customized network functions and systems - capabilities that neither Verizon nor MCI was able to fully satisfy standing alone. Petitioners state that Verizon's local and wireless presence, coupled with MCI's core strength in large business and government sales, will allow the combined company to provide government customers with a better mix of products and services to meet these customers' needs.

Petitioners also believe that competition in the mass market will benefit from, rather than be impeded by, the proposed merger. Petitioners state that the Board's task in reviewing the merger's effect on mass market competition is not to determine whether the local markets are competitive or whether Verizon has market power in mass market services. Rather, the relevant question, according to Petitioners, is whether Verizon's acquisition of MCI will have any incremental adverse effect on mass market competition. Petitioners assert that MCI's mass market business has declined substantially and that MCI has sharply curtailed its marketing efforts in this segment. Moreover, petitioners contend that analysts forecast that MCI's mass market business will decline rapidly in the next several years.

According to petitioners, the fact that MCI does not now and would not in the future constrain Verizon's prices is itself sufficient reason to conclude that the transaction will not eliminate an economically significant competitive force from the mass market segment. Petitioners assert that the RPA fails to provide any factual basis for its speculation that MCI would be a price-constraining force for Verizon in the mass market.

Moreover, petitioners opine that mass market customers have and will continue to have ample competitive service alternatives after the merger. Petitioners assert that competition from traditional wireline providers is strong and the industry-wide trends concerning intermodal competition are very much in evidence in New Jersey. According to petitioners, consumers today have more choices in communications services than ever before, and intermodal alternatives have displaced and are continuing to displace a significant amount of traditional wireline service and usage. In petitioners' view, the RPA cannot deny that fundamental changes have occurred and continue to occur in this industry. Petitioners believe that the RPA seeks instead to minimize the impact of these developments by raising arguments that fail to detract from the fundamental reality facing traditional telephone companies

Petitioners believe that the evidence of actual consumer behavior and preferences demonstrates that intermodal alternatives in fact constrain the price of wireline service. For example, petitioners argue that cable facilities pass virtually every home in New

Jersey, and that 63 percent of homes have cable telephony available or will soon. Petitioners state that cable modem service accounts for 69 percent of high speed lines serving this State, and that these developments are already putting pricing pressure on telephone companies. Petitioners also state that wireless displacement of local and long distance calling is already substantial and growing rapidly, displacing 60 percent of long distance and 30 percent of local calling from landlines in households with wireless telephones. Petitioners also contend that Voice-over-Internet-Protocol ("VoIP") service, email and instant messaging usage are growing rapidly. Petitioners believe that these, and emerging technologies such as Wi-Fi and Wi-Max, will also exert downward pressure on landline rates.

Petitioners also contend that the transaction will not harm competition for mass market long distance services. According to petitioners, there is no longer a "stand-alone" long distance market, since competitors are now offering all distance services that have obliterated the distinction between local and long distance. Petitioners contend that competition for long distance services in New Jersey (and nationally) is intense and average prices are continuing to decline.

In general, petitioners believe that, rather than suffering from the effects of the merger, mass market customers will benefit, as products and services developed for the enterprise sector are delivered to smaller business customers with similar needs. Petitioners further state that the transaction will encourage increased investment to critical network infrastructure and accelerate the delivery of innovations to all mass market customers. Petitioners maintain that MCI's current customers will also benefit because this transaction will increase the financial strength of the MCI subsidiary

Petitioners further contend that Verizon and MCI's businesses are largely complementary, so the proposed transaction will not result in the elimination of a significant competitor in any market. There is already extensive and increasing competition in today's communications markets that will effectively constrain the merged company's behavior. Consequently, the merger will provide meaningful benefits to New Jersey customers without any negative effect on competition.

Petitioners discount the CLEC intervenors' argument that the loss of Verizon and MCI as independent competitors will adversely affect the enterprise market because, in petitioners' view, the facts show that while Verizon and MCI compete for large enterprise customers, they do not do so to any meaningful degree. According to petitioners, MCI and Verizon rarely compete head-to-head in bidding for the business of enterprise customers, and petitioners assert that there is extensive competition for all different types and sizes of such customers, and for the various services they purchase. Moreover, petitioners maintain that Verizon and MCI do not have significant facilities that overlap in New Jersey.

Petitioners also reject CCG's attempts to analyze this issue by sub-dividing the enterprise market, arguing that there is no separate market for "mid-sized" businesses. According to petitioners, Verizon witness William Taylor points out in rebuttal testimony that this is not a separate "market," and to the extent these customers are purchasing high capacity services they are no different from an economic perspective from any other enterprise customer.

Moreover, petitioners argue that, even if a discrete mid-sized business market exists, the transaction will not harm these customers. To petitioners, the CLEC intervenors' argument that MCI is a significant provider of T-1 and T-3 services to medium-sized businesses is equally unavailing. According to petitioners, business customers have plenty of competitive alternatives available to them because in virtually every area in which MCI has deployed facilities there are already other competing carriers with comparable facilities. Moreover, according to petitioners, additional competing carriers are clearly capable of deploying facilities in these locations, or of availing themselves of the opportunity presented by the petitioners' Stipulation settling its case with DOJ. Therefore, in petitioners' view, MCI is not a significant competitor for mid-sized business customers.

Petitioners additionally claim that what they characterize as Qwest's and CCG's speculative argument regarding "mutual forbearance" is not relevant to this Board's analysis and is not supported by the record. Petitioners believe that the Board should look to the merger's impact in New Jersey, not to whether Verizon/MCI will compete out-of-region in other states. According to petitioners, it defies belief that Verizon, having paid billions of dollars to acquire MCI's assets, and then having invested significant additional amounts in MCI's network and information technology platforms, would deliberately not utilize such assets to compete in SBC's service areas. Petitioners argue that the combined company must provide its services nationally to compete for enterprise customers, and will be in a better position to do so effectively and profitably than either company standing alone.

Petitioners also reject intervenors' claim that the transaction will harm competition for wholesale "special access" services. As a threshold matter, petitioners argue that such services fall under the FCC's exclusive jurisdiction, since they are considered to be jurisdictionally interstate if interstate traffic represents 10 percent or more of the total traffic on a special access line. Petitioners assert that Qwest admits that it purchases its special access facilities in New Jersey primarily through interstate tariffs. Thus, according to petitioners, Qwest's and CCG's special access arguments are more appropriately addressed by the FCC, since this Board does not regulate interstate special access and accordingly lacks authority to impose conditions on the terms or pricing of that federal service. Petitioners further point out that the FCC has recently commenced a broad examination of the regulatory framework to apply to interstate special access services.

Petitioners further discount the claim that MCI is a substantial wholesale provider of special access in New Jersey, which, according to petitioners, is refuted by the facts. According to petitioners, to serve as an independent source of special access service MCI would require its own extensive fiber facilities in New Jersey. The evidentiary record conclusively demonstrates, in petitioners' opinion, that MCI does not own the necessary facilities. In fact, according to petitioners, MCI's national wholesale Metro Private Line Revenues represent just 4 percent of Verizon's total wholesale special access revenues.

Petitioners also believe that the record conclusively demonstrates that MCI does not constrain Verizon's tariffed special access prices. According to petitioners, Qwest fails to provide any evidence to support its claim that MCI is able to "negotiate" with Verizon over the special access rates to appear in Verizon's tariffs and which are applicable to all similarly-situated purchasers. Nor, according to petitioners, does Qwest explain why it believes MCI is unique in this regard or why other large special access purchasers, such as AT&T, Sprint, other wireless carriers that are increasingly significant purchasers of special access, or even Qwest itself, would not exert similar pressure on Verizon's special access prices.

Petitioners argue that the merger conditions proposed by the RPA and the CLEC intervenors should be rejected as unnecessary and inappropriate. According to petitioners, virtually all of these conditions have already been litigated in other proceedings, are being addressed in other venues, or are unrelated to the merger and are therefore, in petitioners' view, "shamelessly" self-serving.[8] Moreover, in petitioners' view, many of the proposed conditions are beyond the Board's authority to adopt because they relate to interstate services provided under either federal tariff or contract, and some would require the Board and Verizon to act contrary to federal law.

For example, petitioners argue that the RPA and CLEC intervenors' demand that the Board "override" federal rules regarding unbundled network elements ("UNEs") and special access Is unlawful and should be denied. In petitioners view, the recommendation that the UNE-Platform ("UNE-P") be mandated at Total Element Long Run Incremental Cost ("TELRIC") rates is contrary to the federal law governing UNE-P. Such demands, in petitioners' opinion, make abundantly clear that intervenors are seeking to use this transaction to obtain for themselves greater competitive access to Verizon's network at lower rates than Congress has mandated under the Telecommunications Act. Petitioners would view such lower rates as illegal since, according to petitioners, it is uncontroverted that UNE rates must be calculated under the FCC's TELRIC pricing rules.

Petitioners further argue that CCG's recommendation regarding, *inter alia*, UNE rate caps and mandated unbundling, would harm the development of facilities-based competition in New Jersey by providing an artificial and unnecessary advantage to those CLECs who are not pursuing a facilities-based strategy. Petitioners also state that following CCG's recommended course would harm those CLECs, as well as ILECs such as Verizon, who have invested in telecommunications assets.

According to petitioners, the intervenors' proposed conditions regarding special access services should be denied because they are unnecessary and not properly brought in this forum. Petitioners argue that the Board lacks authority to set rates for interstate special access services because it is within the FCC's jurisdiction. They further state that the vast majority of special access services provisioned in New Jersey are

---

[8] Pet.I at 46

purchased from Verizon's interstate tariffs; the Board lacks jurisdiction over the rates, terms and conditions on which Verizon offers such services. Petitioners state that the merger will not be completed until all necessary governmental and regulatory approvals and reviews have been obtained or completed, including the approval from the FCC. In petitioners' view, the market for special access services in New Jersey is sufficiently competitive that State-imposed rate caps are not needed to assure that special access rates remain reasonable. Moreover, petitioners believe that because the FCC regulates Verizon's interstate special access services, it will be impossible for the merged company to harm competition by manipulating the market for special access services.

Petitioners similarly reject intervenors' proposal that the Board reinitialize interconnection agreements or allow a fresh look at interconnection agreements, viewing the proposal as unreasonable, unnecessary and unlawful. Petitioners contend that, although the Board can review and enforce aspects of interconnection agreements, the Board cannot unilaterally alter a carrier's contractual agreements. Moreover, petitioners discern no factual or legal basis to support the CLECs' request for a "fresh look" or "reinitialization" of existing interconnection agreements.

Furthermore, petitioners argue that the RPA and CLEC intervenors' proposal that the combined company should be required to divest overlapping MCI facilities and customers is unnecessary, unlawful and intended solely to hamper the combined company as a competitor. In petitioners' opinion, the motive for this recommendation appears to be a desire by a competitor to obtain a private benefit, since Qwest, which failed in its attempt to acquire MCI, has, according to petitioners, stated publicly that it will attempt to acquire network facilities and customers that may be divested as part of the merger. Petitioners argue that a state regulatory board cannot constitutionally impose conditions upon a merger that would impair interstate commerce or the obligation of contracts by disrupting the national - and in some cases global - communications systems of enterprise customers by forcing them to switch providers for any offices located in New Jersey.

Petitioners are equally unsympathetic to the RPA's recommendation that merger synergies be "shared" through undefined rate reductions. Petitioners view this proposal as arbitrary, unreasonable and inconsistent with the Plan for Alternative Regulation ("PAR-2") currently governing Verizon.[9] Petitioners maintain that it would be inappropriate to require Verizon to pass through merger synergies through mandated rate reductions because the communications market is competitive today and will be more competitive in the future. Petitioners assert that such competitive market pressure will force Verizon to "pass through" merger synergies in the form of innovation, the ability to sustain current prices, and increased value, in addition to or in lieu of price adjustments. Moreover, in petitioners' view, the RPA's request that the Board conduct a proceeding to evaluate switched access charges should be rejected, because there is nothing inherent in this transaction that affects switched access services.

---

[9] See I/M/O the Application of Verizon New Jersey Inc. for Approval (i) of a New Plan for an Alternative Form of Regulation and (ii) to Reclassify Multi-Line Rate Regulated Business Services as Competitive Services, and Compliance Filing, Order, Docket No. TO01020095, (August 19, 2003)

Petitioners also reject the RPA's recommendation that the Board impose new quality-of-service standards on Verizon NJ, because, in their view, this proposal is not merger specific and sufficient standards already exist. Petitioners argue that there is no reason to believe that the merger, which will not affect the manner in which services are provisioned, will result in any decline in service quality. Petitioners argue that this, in their view, non-merger specific concern is tempered by the fact that the Board has already established substantial service quality standards to make certain that service quality does not give way to a company's incentive to reduce costs.

Petitioners also reject the RPA's suggestion that the combined company be ordered to provide "stand-alone" digital subscriber line ("DSL") service, since, according to petitioners, Verizon already offers stand-alone DSL at reasonable rates, terms and conditions. Petitioners therefore argue that the Board should reject the recommendations of Qwest and the RPA, because the ubiquitous availability of Verizon DSL is not necessary for VoIP competition. There is, according to petitioners, already widespread availability of broadband service due to the presence of cable modem service. Moreover, in petitioners' view, this condition has no relationship whatsoever to the merger, since DSL is an interstate service that is not regulated by the Board. Petitioners contend that broadband connections are already available throughout New Jersey from cable companies, and that the RPA's demand is moot, because Verizon already offers standalone DSL under an FCC tariff.

Petitioners further characterize the RPA recommendation that the Verizon/MCI entity be required to deploy fiber-to-the-premises ("FTTP") throughout the State as "extraordinary."[10] They argue that this proposed condition should be rejected out of hand as unreasonable and unrelated to the issues in this proceeding under N.J S.A. 48:2-51.1. Petitioners contend that Verizon NJ has begun to deploy FTTP in various parts of the State in its efforts to stay competitive with cable companies that have already deployed facilities, enabling them to provide cable telephony and other services.

Petitioners also urge the Board to reject the RPA's "unfounded" claim that bundled service offerings may result in anti-competitive behavior.[11] Petitioners maintain that, viewed from a consumer welfare perspective, the Board should reject RPA's negative vision of market trends and recognize bundling for what, in petitioners' opinion, it is - a positive response to consumer demand that is available from wireless carriers, cable companies, and VoIP providers, in addition to traditional wireline providers. According to petitioners, virtually all competitors offer competing bundles of services to mass-market customers. Petitioners argue that the RPA's claim that Verizon's "Freedom Package" service offerings raise issues about cross-subsidization, predatory pricing and tying are baseless. According to petitioners, these concerns are irrelevant because they are unrelated to the merger.

Petitioners also opine that conditioning the merger on required employee staffing levels is unnecessary and inappropriate. Petitioners contend that the merger will not harm employees in New Jersey because: (1) employee reductions resulting from the

[10] Pet.I at 64
[11] Pet.I at 65

transaction will most likely occur due to the consolidation and elimination of redundant positions; (2) the post-transaction company will likely reduce headcount in those areas in which the company is able to provide shared services more efficiently; and (3) over the long run, the synergies created by Verizon's combination with MCI should benefit employees in New Jersey by providing additional opportunities for employment.

Petitioners point out that Qwest recommends that Verizon be required to divest MCI customers or overlapping facilities if the combined company does not "commit" to compete out-of-region. However, petitioners maintain that the stipulation they have reached with DOJ has resolved this issue and the Board need not consider these demands.

Petitioners also assert that the Board should deny the RPA's request that it revisit recent service reclassification decisions. In petitioners' view, the RPA has not, and cannot, offer any evidence that the comprehensive decisions and orders issued by the Board reclassifying various services as competitive should be re-visited.

RPA

The RPA submits that the Board should reject the Petition for Approval of Merger filed by petitioners because petitioners have failed to present sufficient evidence to satisfy the statutory requirements of N.J.S.A. 48:2-51.1, and have failed to meet their burden of proof. The RPA also maintains that petitioners have failed to comply with N.J.A.C. 14:1-5.14, in that the petition does not include the items set forth in that regulation. As a result, the RPA contends that the Board may not consider the petition.

The RPA also states that petitioners have failed to demonstrate that Verizon's proposed acquisition of a chief rival will not enhance Verizon's market power and will not facilitate Verizon's exercise of that power. Instead, in the RPA's view, the evidence unambiguously shows that the merger will increase Verizon's market power significantly. According to the RPA, Verizon dominates the local, long distance, wireless, and broadband markets. The RPA believes that Verizon's proposed acquisition of MCI would further entrench its monopoly position in numerous telecommunications markets in New Jersey. The RPA asserts that Verizon has offered meaningless generalities about intermodal alternatives, and unsubstantiated speculation about the future role of such services in constraining Verizon's market power.

The RPA submits that Verizon has not demonstrated that effective competition exists among service providers of local exchange services. Verizon recently reported that Resale and UNE-P lines totaled 6.6 million at the end of the fourth quarter 2004, down from 6.7 million at the end of the third quarter 2004. In light of recent regulatory developments, and to the extent that migration has been to UNE-P, the RPA believes that UNE-P will no longer be an option for CLECs, and further does not expect a smooth transition to UNE-Loop ("UNE-L") or facilities-based competition. The RPA asserts that Verizon NJ's hot cut processes are neither trouble-free nor cost-based, and until the Board resolves the significant matters outstanding in Docket No. TO03090705, the RPA submits that CLECs continue to face a significant barrier to entry.

The RPA also claims that the acquisitions by two Regional Bell Operating Companies ("RBOCs") of their rivals will concentrate the market to the detriment of consumers. Thereafter the two newly combined companies would, according to the RPA, control an overwhelming percentage of end-user lines in New Jersey. In the RPA's view, the implication of this market concentration and re-monopolization is that Verizon may further entrench its market power and thus its ability to raise prices without consumer flight (*i.e,*. consumers will not have other options if Verizon raises prices or provides poor service quality).

The RPA further asserts that Verizon has improperly applied the DOJ/Federal Trade Commission ("FTC") Merger Guidelines in its analysis of the impact of the proposed transaction on competition in New Jersey, and also fails to conduct any empirical analyses in support of the petition. According to the RPA, the merger would accelerate Verizon's abandonment of low-income, moderate income, low use, rural, and non-technologically savvy households. Petitioners' witnesses, in the RPA's view, were not familiar with the internal company documents that petitioners submitted to the FCC in response to the FCC's information and data requests, and, therefore, their testimony should be afforded minimal weight.

Before examining the impact of the merger on competition, the RPA believes that the Board should assess the status of competition in the pre-merger environment, which, according to the RPA, is bleak. In the RPA's view, Verizon has conceded that CLECs and interexchange carriers ("IXCs") no longer pose a significant competitive threat to Verizon and MCI. The RPA argues that, despite the claims of competition for its wireline operations, Verizon's own documents show any loss offset by growth in other areas. In an internal report, Verizon states, according to the RPA, that its overall growth in the wireless industry, its entry in the long distance market in the East and growth in the Internet service arena help to balance losses in the local market. The RPA further states that, as of March 2005, a high percentage of Verizon residential line customers subscribe to Verizon long distance, whether through a Freedom Package or through Verizon Long Distance Service.

The RPA asserts that the merger guidelines, if properly applied, demonstrate that the merger as presently structured would harm competition in New Jersey. According to the RPA, petitioners have failed to demonstrate that Verizon's proposed acquisition of a chief rival will not enhance Verizon's market power and will not facilitate Verizon's exercise of its market power. Instead, in the RPA's view, the evidence unambiguously shows that the merger will increase Verizon market power significantly. According to the RPA, CLEC-owned lines represent a *de minimis* percentage of all the lines in New Jersey. The RPA also points to an article presented before the FTC/DOJ by Professor John Kwoka titled "Some Thoughts on Concentration, Market Shares, and Merger Enforcement Policy," which recommends that a concentration analysis be performed to evaluate the anticompetitive potential of mergers, namely: cooperation, unilateral effects and strategic behavior.

Furthermore, the RPA asserts that, based on data provided by Verizon in discovery and provided to the FCC, the Herfindahl Hirschman Index ("HHI") of the mass market in New Jersey is 6,425, and post merger the market would be 7,020. The RPA asserts that markets with HHI below 1000 are considered to be unconcentrated; those with an HHI between 1000 and 1800 to be moderately concentrated, and those with an HHI above 1800 to be highly concentrated. The RPA notes that, despite the forgoing, Dr. Taylor testified that he does not believe that a formal relevant market analysis is needed and asserted that there is no sound basis - in law, economics, or public policy – for basing competitive analysis on past data that are already patently obsolete.

Moreover, according to the RPA, including wireless and VoIP would not likely change the magnitude of the foregoing results. The RPA maintains that if one were to include intermodal demand in an HHI analysis (which the RPA does not believe to be justified), only intermodal demand that supplies consumers' requirement for the initial line should be included. According to the RPA, the vast majority of New Jersey wireless subscribers use wireless to supplement, rather than to replace, their basic line. Therefore, in the RPA's view it would be improper to include such lines in an HHI analysis. Demand for VoIP is negligible, according to the RPA, and therefore it is not necessary to include VoIP demand in the analysis. The RPA concludes that petitioners have thus failed to define the market properly, and in so doing have ignored the impact that the merger will have on Plain Old Telephone Service ("POTS") customers, who the RPA believes will likely be "left behind" in a post-merger competitive landscape.

The RPA further argues that intermodal competition from VoIP, wireless and cable is ineffectual and is not a substitute for wireline service. In the RPA's opinion, the evidence clearly shows that 1) Verizon has not suffered detrimental line loss for residential and small business customers to intermodal competition, and 2) VoIP, wireless and cable, although increasingly popular, are not substitutes for basic local exchange service. The RPA quotes a recent Board Order issued in the SBC/AT&T merger proceeding in support of this argument, in which the Board stated that, "[t]he RPA EXHIBIT rightly points out that VoIP is not an economic substitute for POTS, since it requires a broadband connection, for which some consumers are unwilling or unable to pay."[12]

The RPA also dismisses petitioner's allegations that wireless is a substitute for traditional basic local exchange service. The RPA contends that, although approximately 6.3 million New Jersey consumers subscribe to wireless service, Verizon's own documents predict the slow growth of wireless-only households. The RPA acknowledges that cable companies are certainly competitors, but points to a recent Washington Post article suggesting that telecommunications providers have begun to pull ahead of cable companies in the race to sign up customers for their respective broadband services. Therefore, the RPA argues that, contrary to petitioner's allegations, VoIP, wireless, and cable, although increasingly popular, are not substitutes

---

SBC/AT&T at 10

for basic local exchange service. Petitioners have, in the RPA's view, failed to provide evidence that VoIP users will in fact abandon wireline service completely or simply use VoIP as supplemental service, especially in light of various technical issues which remain unresolved such as access to E911 services.

According to the RPA, the evidence regarding Verizon's continuing commitment to offer stand-alone DSL at rates, terms, and conditions comparable to the DSL that it offers its own voice customers is murky at best. In the RPA's view, the evidence indicates that customers of stand-alone DSL pay a premium relative to Verizon's voice customers, and that it is unclear how consumers learn about the availability of stand-alone DSL. According to the RPA, Verizon Online DSL without voice for households is $5.00 more per month than Verizon Online DSL and Verizon Business DSL without voice is $10.00 more per month than Verizon Business DSL. The RPA argues that without reasonably priced, predictable access to stand-alone DSL, there can be no expectation of VoIP-based alternatives. In the RPA's view, Verizon has refused to commit to offering DSL post- merger, and, therefore, there is no guarantee that stand-alone DSL will be offered by Verizon post- merger absent a merger condition by this Board. The RPA recommends that the Board condition its approval of this merger on, *inter alia*, the combined company offering stand-alone DSL at POTS rates.

The RPA also believes that MCI remains a formidable competitor to Verizon, and, if it were not purchased by Verizon, could be sold to another company that continues to so compete. The merger, in the RPA's view, eliminates one of the primary local exchange competitors of Verizon in New Jersey. As the RPA sees it, at stake is the loss of MCI as an independent CLEC, as a regulatory "activist," and as a Verizon rival. The RPA views this as a monumental and irrevocable setback to competition. According to the RPA, MCI represents approximately 16 percent of CLEC lines in New Jersey, and Verizon's own marketing intelligence shows that MCI is one of Verizon's chief rivals.

If the Board decides to grant the proposed plan of merger, RPA states that it is imperative that the Board follow the RPA's recommendation that conditions be imposed which, in the RPA's view, safeguard New Jersey consumers and ratepayers. Among other things, the RPA recommends that the Board require the combined company to commit to a multi-year rate freeze for MCI's residential and small business customers. The RPA also recommends that the Board should commit to conclude an intrastate access charge proceeding within six months. The RPA further recommends that 1) petitioners flow-through synergies to customers of non-competitive services; 2) Verizon commit to offer broadband access at basic local exchange service rates; 3) Verizon's service quality standards be upgraded; and 4) the Board conclude an intrastate access charge review within six months of the merger closing. The RPA also requests that the Board's decision be delayed until the FCC and DOJ reviews are complete.

Conversent

According to Conversent, the proposed merger will be harmful to competition, particularly for competition in the small to medium sized business market. Conversent asserts that there are no "intermodal" alternatives that meet the demands of small to medium sized businesses. Conversent notes that petitioners' witness Taylor recommends that the Board examine the merger on two broadly categorized customer segments: "mass market customers" and "enterprise customers." However, in Conversent's view, this essentially ignores all small to medium-sized business customers that do not exhibit the same demand characteristics of either residential "mass market" customers or very large "enterprise" businesses.

Conversent also believes that petitioners greatly overstate the extent of intermodal competition to small and medium sized businesses in New Jersey. Conversent discounts petitioners' alleged losses in access lines and their suggestion that this fact proves that intermodal competition is thriving at Verizon's expense. Conversent argues that access line trends are increasingly irrelevant to overall RBOC revenue trends, due to increasing exposure to wireless, data and long-distance ("LD"). Conversent also claims that because Verizon has significant market share in wireless and data markets, its revenues can grow even as access lines continue to decline due to its increasing exposure to wireless, data and LD (now more than 55 percent of consolidated revenues).

Moreover, Conversent notes that the FCC eliminated the obligation of Verizon and other ILECs to provide unbundled local switching in the Triennial Review Remand Order ("TRRO"),[13] and with it the obligation to provide UNE-P. As a result, according to Conversent, CLECs will be obligated to obtain UNE-P-like services from Verizon at "commercial" rates that are substantially higher than current UNE rates. Conversent predicts that some competitive carriers may be forced to raise prices or to quit the local market entirely. Conversent also maintains that Verizon's revenues have increased every year since 2000.

Conversent also rejects petitioners' contention that the presence of intermodal alternatives alleviates any potential harm to competition cased by the merger. Conversent contends that, viewed solely through anecdotal evidence, these "intermodal" services may appear to be sufficient substitutes for some uses of traditional wireline telephone services. But Conversent further argues that a service's substituting for some functionalities of the overall traditional wireline service is not the same as substituting for the entire offering when compared with wireline services demanded by small and medium businesses.

With regard to cable telephony, Conversent states that a fair estimate of the number of cable telephony lines in use by all customers in New Jersey is 17,594. Conversent also maintains that cable telephony's new subscriber sign-ups have slowed to a trickle, and that as an intermodal alternative, cable telephony is not widely available to business subscribers, large or small. Similarly, Conversent argues that VoIP is not widely used by businesses to replace or supplement traditional wireline facilities. According to Conversent, VoIP lacks the quality and consistency necessary to permit widespread

---

[13] Unbundled Access to Network Elements, Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 04-313, 01-338, Order on Remand, FCC 04-290 (Released February 2, 2005)("Triennial Review Remand Order" or "TRRO")

adoption by business customers. Among the alleged problems, according to Conversent, are the multitude of limitations in ubiquity, quality, cost, and maturity that currently make VoIP services an inadequate substitute for incumbent LEC voice service in the mass-market. Business customers also do not view wireless as a substitute for wireline services, in Conversent's view. Conversent argues that the evidence more convincingly demonstrates that customers generally are subscribing to *both* services, and by doing so are confirming that they see the products as complements, not substitutes.

To the extent intermodal services do serve as viable alternatives to wireline service, Conversent also believes that Verizon's most effective intermodal "competitor" is in fact Verizon. Assuming that wireless, broadband, and VoIP services are indeed competitors of Verizon's wireline business, in limited markets, Conversent claims that Verizon is, or is poised to be, the biggest and most effective competitor in these markets. In support of this assertion Conversent points to the fact that Verizon has approximately 50 percent of the wireless market in New Jersey.

Conversent further asserts that petitioners distort the retail markets into only two loosely defined categories – the mass market and the enterprise market, which ignores an important market in New Jersey – the small to medium-sized business market. Conversent claims that petitioners then erroneously argue that there is robust and rampant competition for all customers in New Jersey, based on intramodal access line losses and intermodal sources. However, Conversent argues that any examination of the HHI data for access to most business customers through wireline services shows that the local business markets in New Jersey are dangerously concentrated now and will become even more so if this merger is completed.

Conversent also contends that the Board should view MCI as one of the only real competitors to Verizon, in commercial businesses in New Jersey where MCI has competing "lit" fiber. Conversent further believes that Petitioners do not want the Board to appreciate that the loss of MCI, on both the retail and wholesale level, leaves CLECs highly vulnerable to market abuse by a largely monopoly wholesale special access provider. Conversent submits that when the Board examines the record in its entirety, the only conclusion possible is that petitioners have not proven that the merger will bring any positive benefits, but will instead wreak havoc on competition, especially in the small to medium -sized business markets, and the wholesale markets CLECs rely on to serve such customers.

Conversent further alleges that petitioners fail to appreciate that 1) business customers, small businesses included (beyond the single line home business), should not be evaluated with residential customers (the "mass market"); 2) that all business customers of whatever size have demands that are different than residential customers; and 3) that small to medium sized business customers represent an important market that is distinct from the "mass market" or the large "enterprise" market.

Conversent suggests that Verizon's predominance in providing network facilities used to serve almost all businesses in New Jersey is the most problematic potential result of the proposed merger. According to Conversent, Verizon's market concentration in "lit" buildings was extremely high before this proposed merger, and only gets unacceptably high afterward.

Conversent also contends that the real question is what role MCI plays against Verizon's market power in wholesale special access markets, and that the proper inquiry then is on the relative size of MCI's wholesale capacity compared to all other companies, not MCI compared to Verizon. Conversent submits that MCI is playing a pivotal role in disciplining Verizon's rates for special access.

Conversent submits that the Board should place specific conditions designed to protect CLECs from any further eroding of access to UNEs. These protections should be maintained for five years from the date of the Board's Order. Conversent indicates that 1) rates for §251 UNEs should be capped at rates in effect as of July 1, 2005; 2) access to loops and transport UNEs should be made available regardless of change of law in the next five years, upon terms of access in place as of July 1, 2005; 3) the cap on the number of DS1 and DS3 loops and transport circuits should be removed; and 4) Verizon should recalculate the list of wire centers without the presence of MCI or AT&T as fiber-based collocators. Conversent further recommends that the Board should, at a minimum, require Verizon to offer DS1 and DS3 loops and transport in all areas where UNEs are no longer available at Board-set, just and reasonably competitive rates, and further recommends that the Board should, at a minimum, require Verizon to provide high capacity loops and transport in New Jersey at the lowest rates offered by MCI to any customer for comparable facilities in New Jersey. Conversent also proposes that the Board should, at a minimum, stabilize CLEC access to bottleneck facilities provided by Verizon by allowing interconnection agreements in force today to be extended for a five-year period beginning on the date of the Board's Order in this proceeding.

<u>CCG</u>

According to the CCG, petitioners have failed to carry the burden of demonstrating that the proposed merger does not harm New Jersey consumers or competition. Petitioners' 14-page petition and pre-filed testimony are, in the CCG's view, devoid of any mention of possible anticompetitive effects of the merger or any factual analysis underlying its request for approval and claim of public interest benefits. In the CCG's opinion, by the end of the hearings it had become increasingly clear that none of petitioners' witnesses had conducted a substantive analysis of the economic impact of the proposed merger in New Jersey. The CCG therefore argues that the Board must deny the petition for failure to establish an evidentiary record demonstrating that the proposed merger is in the public interest.

The CCG asserts that petitioners have failed to demonstrate that the merger will not have significant anticompetitive effects on the market for mid-sized business customers that buy high capacity loops for voice and data connectivity. In fact, the CCG believes that the merger will significantly reduce competition for the New Jersey business community in two separate but interdependent ways. It will, according to the CCG, remove MCI as a direct and significant retail competitor of Verizon. It will also remove

MCI as Verizon's largest direct wholesale competitor, providing low cost loops and transport to other competitive local exchange carriers that require such facilities if they are to compete with Verizon for the business of end-user customers.

The CCG opines that the Board has the authority and obligation to review the proposed merger and to impose such conditions as it deems necessary to mitigate harms to competition or to New Jersey consumers. CCG asserts that petitioners have the burden in this proceeding of proving that the proposed merger serves the public interest. However, a merger that materially reduces competition (which, in the CCG's view, is a fair characterization of the instant transaction) is not, according to the CCG, in the public interest.

According to the CCG, the record clearly demonstrates that this merger will result in significantly diminished competition in this State, materially impairing consumer choice and harming the public interest. In assessing the pre- and post-merger impacts to competition, and ultimately on rates to consumers in New Jersey, the CCG urges that the Board employ the DOJ/FTC Merger Guidelines, which the CCG characterizes as analytically rigorous and well-respected. In the CCG's view, the record in this proceeding demonstrates that as a result of the competitive consequences that naturally flow from the proposed merger, based on the current state of the mid-size business market, prices will likely increase and competitive choice will decrease, both harming New Jersey consumers and competition in the State.

The CCG further maintains that there is a distinct and definable market for mid-sized business customers. The CCG asserts that in the mid-sized business market, even a cursory review of market conditions demonstrates that neither wireless nor VoIP are alternatives in the case of a non-transitory price increase by a theoretical monopolist. The CCG contends that the record in this proceeding demonstrates that mid-sized business customers, that is, those who routinely purchase T-1/T-3 high capacity loops and transport on a localized basis, have very different needs than mass market (mostly residential) customers, who tend to purchase DS-0 level voice grade lines out of a tariff, and large enterprise customers, who tend to purchase sophisticated and customized telecommunications solutions, with dedicated account representatives over multiple locations.

The CCG also claims that petitioners have provided no data or evidence demonstrating that carriers serving large multi-location enterprise customers would, could or actually do sell individual high capacity loops to single location mid-size business customers. The CCG asserts that similar market concentration analyses in other jurisdictions support the conclusion that the proposed merger increases market concentration beyond acceptable levels.

The CCG further states that the record established by petitioners does not contradict findings of unacceptable market concentration post merger. In the CCG's view, petitioners have not provided evidence to sustain their assertion that there are viable, commercially available alternatives to the T-1 and T-3 services provided both on a retail and wholesale basis by MCI and Verizon. The CCG also opines that there are, in fact, few viable competitive alternatives, representing an extremely small percentage of the market.

The CCG also claims that the anticompetitive consequences caused by the loss of MCI's retail enterprise services are compounded by the loss of MCI as a wholesale provider. CCG believes the record shows that Verizon is the overwhelmingly dominant competitor in all local markets in the State, while MCI is second or third. The loss of MCI will, according to the CCG, materially increase Verizon's unilateral market power and overall market concentration. The loss of MCI as a wholesale competitor offering different types of wholesale services will also, in the CCG's opinion, further diminish competition for the New Jersey business community. The CCG has concluded that MCI is a significant provider of wholesale special access in New Jersey and that MCI's elimination from this market will have significant negative effects on competition. Losing MCI as an independent competitor in the market for the purchase and sale of wholesale special access services will have a material impact on the pricing under which smaller carriers are able to purchase, and as such resell, high capacity loops and transport to the detriment of New Jersey mid-sized business customers.

The CCG also asserts that Verizon's primary purpose in acquiring MCI is to rid itself of its primary competitor. The fact that Verizon regards MCI as an aggressive competitor for high-capacity services is well documented, according to the CCG. It further states that a decision to buy, rather than build, needed facilities is not pernicious in itself; but a strategy of purchasing of a direct competitor (one of only two identified as driving the market price) in order to eliminate aggressive pricing and restore margins is overtly anticompetitive in the CCG's view.

In addition to acting as a market constraining influence over Verizon and other carriers' rates, the CCG also believes that MCI has historically wielded direct and significant influence over Verizon's pricing initiatives. Loss of this influence over Verizon pricing will further harm the state of competition in New Jersey, in the opinion of the CCG.

In order to address these alleged competitive harms, the CCG believes that the Board must either deny the merger outright or impose conditions on the merger to protect the public interest. The CCG argues that the proposed merger will have the effect of further concentrating market power in Verizon, resulting in reduced competitive choice in the mid-sized business market, and consequently, increased prices for a variety of customers in New Jersey. If this merger is permitted to be consummated, the result will, in the CCG's view, be a highly concentrated mid-sized business market in which one of the largest suppliers of retail and wholesale high capacity facilities will be essentially eliminated, leaving few alternative competitive suppliers of wireline high capacity facilities, and no alternative suppliers of high capacity facilities through intermodal technologies. The CCG argues that as long as Verizon controls the copper loop, the physical connection into the home or business location, Verizon essentially controls the price of the VoIP services it touts as a source of intermodal competition, and ultimately controls the market.

The CCG further contends that there is nothing in N.J.S.A. 48:2-51 that permits the

Board, if the relevant standard for approval is not met, to do anything but deny the merger or impose conditions that are necessary to mitigate the anticipated harms. If the Board does not take action now, but rather defers any action until some later time when the Board determines it is necessary to act, it will, in the CCG's view, be powerless to mitigate the competitive harms, at least in the broadband marketplace. The CCG also contends that the Board has the authority to adopt the recommended remedies and conditions. The CCG has, in its own view, demonstrated that the Board does in fact have the authority to not only impose conditions under N.J.S.A. 48:2-51.1, but has the obligation to do so if it decides not to deny approval of the merger outright.

According to the CCG, the Board also has ample authority to regulate interstate special access services and UNEs. The fact that the FCC has indicated that such circuits are to be treated as interstate solely for the separations and accounting rules, however, has, in the CCG's opinion, absolutely no impact on a state's ability to regulate the intrastate portion of jurisdictionally mixed circuits as otherwise permitted by the Act. Recently, according to the CCG, the FCC ruled that, because special access services are jurisdictionally mixed, both the state commission and the FCC have the authority to review and consider whether the provisioning of these services meets the requirements of the Telecommunications Act. Moreover, in its TRRO the FCC stressed, according to the CCG, that its unbundling rules did not preempt state unbundling laws, and that only after a future, fact-intensive proceeding would actual preemption be considered.

The CCG believes that the Board can and should protect the public interest by imposing conditions on this merger. The purpose of such remedies, in the CCG's view, would be to attempt to artificially create market conditions that simulate as near as possible the conditions that existed pre-merger. The CCG recommends the following conditions should the merger be approved:

SECTION 251 UNEs
(i) Rates for 251 UNEs should be capped at the rates in effect as of July 1, 2005.
(ii) Enforcement of Verizon's obligation to provide access to loops and transport regardless of whether impairment exists and 251 UNEs is required.
(iii) Require Verizon to waive the cap on the number of DSI and DS3 loops and transport circuits that can be ordered to a building or a particular route.
(iv) Require Verizon to recalculate the wire center locations where 251 high capacity loops, transport and dark fiber UNEs are provided, treating AT&T and MCI as non-qualifying collocators.

SECTION 271 UNEs
(v) Require Verizon to offer DSI and DS3 loops and transport as 271 UNEs in all locations where high capacity loop and transport UNEs are no longer provided under 251.
(vi) The Board should create pricing rules and process for UNEs that Verizon and other ILECs are required to provide under 271 of the Act.

HIGH CAPACITY FACILITIES/SPECIAL ACCESS
(vii) Require Verizon to provide access to local wholesale high capacity loops and transport throughout its New Jersey footprint at the lowest rates offered by MCI to customers for comparable facilities within the twelve month period preceding announcement of the proposed merger.

INTERCONNECTION AGREEMENTS
(viii) Require Verizon to reinitialize all existing interconnection agreements with current provisions with only approved adjustments (for period of 5 years; limit arbitration to only changes of law from TRO and TRRO; and establish uniform contract amendments provisions).

Qwest

As a threshold matter, Qwest states that the Board has the statutory authority and obligation to impose merger conditions where necessary, and has imposed conditions on its approval of mergers and other corporate transactions in the past. In Qwest's view, this authority includes the power to evaluate the merger's impact on the interstate special access market. Qwest notes that prior to hearings, Commissioner Butler ordered petitioners to provide discovery responses concerning interstate special access, which were ruled to be "relevant to the subject matter of this proceeding."

Qwest states that the proposed merger will negatively impact competition for enterprise customers in New Jersey. According to Qwest, the evidence at hearing demonstrated that carriers competing for enterprise customers rely on special access from other carriers, mostly from Verizon. Qwest states that it purchases a high percentage of its special access circuits from Verizon. Qwest further claims that in most instances it has no alternative other than Verizon. Qwest states that here are several other carriers that purchase even more special access in New Jersey than Qwest, including in particular MCI and AT&T. Qwest also asserts that it has no option but to use Verizon for the last mile loops it needs to reach customers.

Qwest rejects petitioners' testimony that intermodal methods for providing special access are emerging, such as cable and wireless (*i.e.*, "WiMax" and "WiFi"). Qwest states that petitioners failed to identify any places in New Jersey today where these forms of special access services are competitive. Qwest also claims that Verizon, as the largest wireless company in the country, does not provide special access through wireless technology. Qwest asserts that Verizon has nearly ubiquitous local facilities to the customer locations in its serving territory.

Qwest also strongly believes that MCI, as a competitive special access provider, disciplines Verizon's special access pricing. Qwest states that MCI markets itself as an unparalleled leader in providing wholesale services, including special access. Qwest states that it buys more special access from MCI than from any other provider in New Jersey other than Verizon, and that MCI is present in at least 39 of Verizon's 206 New

Jersey wire centers – approximately 20 percent. Qwest further alleges that MCI has established direct or indirect connections to a significant number of buildings in New Jersey. Qwest thus contends that MCI acts as a price constraint just as it does when it sells special access from its own on-net facilities.

Qwest argues that petitioners' arguments concerning MCI's special access impact are misleading. According to Qwest, petitioners identify what they purport to believe to be MCI's presence in a limited number of wire centers and buildings in New Jersey. Petitioners further argue that MCI's special access volume is small relative to the amount of special access MCI buys from Verizon, however, the proper measure of the market is how much special access MCI provides in relation to other carriers. Qwest asserts that its data suggests that MCI is the largest provider of special access other than Verizon in New Jersey, and the data on which petitioners rely provides no indication of availability of special access services. Rather, according to Qwest, it merely shows competitor "presence." Qwest maintains that the data ignores the importance of ubiquity and consistency across carriers in purchasing special access.

Qwest further argues that as a very large special access customer, MCI disciplines Verizon's special access pricing. According to Qwest, Verizon data shows that MCI is solely responsible for a significant percentage of Verizon's total wholesale revenue nationwide. Qwest asserts that common sense would suggest that, as such a large and powerful customer, MCI would act as a constraint on pricing.

Contrary to petitioners' claims, Qwest believes that the Verizon/MCI combination will immediately and significantly concentrate market share in the enterprise market. According to Qwest, Verizon today occupies a significant of the enterprise market nationwide. Verizon's acquisition of MCI will, according to Qwest, allow it to immediately and significantly raise its share of the national enterprise market. Qwest believes that the merged entity will possess the ability to squeeze out its competition through its wholesale conduct, thereby devastating competition.

Qwest also argues that MCI's exit from the wholesale marketplace will be exacerbated by the impending merger of SBC and AT&T. Qwest points to what it characterizes as extensive evidence supporting the notion that, post-merger, Verizon and SBC will mutually forbear from competitive behavior in each other's territory. Qwest argues that, assuming SBC will not expand the AT&T presence in New Jersey or otherwise compete in the State (which, according to Qwest, the Board noted in the SBC/AT&T Merger Order that SBC has never done), it is likely, in Qwest's view, that the special access price restraint pressure of both MCI and AT&T will vanish.

Qwest also believes that the proposed merger will negatively impact competition in New Jersey for mass market VoIP customers. Qwest states that VoIP is wholly dependent on the availability of a broadband connection. Therefore, for VoIP to be a viable alternative, it must be competitively priced. Qwest argues that in New Jersey, the price for cable telephony and VoIP is substantially higher than it is for POTS. For VoIP providers to reach their full competitive potential and serve the number of customers that Verizon claims will be served by VoIP, the Board, in Qwest's opinion, must require

Verizon to provide a "stand-alone" DSL product that is free of any requirement to purchase traditional voice in any manner. In Qwest's view, Verizon has refused to commit to continue offering stand-alone DSL after the merger. Qwest contends that, as a result, there is no guarantee that stand-alone DSL will be offered by Verizon post-merger absent a merger condition by this Board.

Qwest submits that MCI's status as a competitive alterative to Verizon special access in New Jersey, coupled with its role as a substantial purchaser of special access from Verizon, places pressure on Verizon to keep its special access pricing in check. Qwest asserts that this competitive pressure prevents Verizon from raising its special access prices anti-competitively, thereby ensuring that other carriers are able to purchase special access from Verizon and compete in the provision of private line service to large enterprise customers in Verizon's local region. Qwest contends that MCI does in fact have a substantial presence in New Jersey. Qwest states that 80 percent of Verizon's special access revenue is generated in 8 percent of its wire centers, and that MCI is present in 20 percent of Verizon's wire centers. Qwest maintains that the data on which petitioners rely regarding alleged competitor presence provides no indication of availability of special access services.

Qwest claims that petitioners' arguments lack the data or analysis that is required to address the presumptively anticompetitive effects of the merger of a Bell company with one of its two largest competitors. Qwest argues that the proper measure of the market is how much special access MCI provides in relation to other carriers. Qwest submits that Verizon failed to present any testimony from pricing witnesses as to MCI's influence on its special access rates. Qwest further indicates that the petitioners failed to gather the requisite evidence to measure MCI's presence in the special access marketplace relative to other carriers. Qwest believes that petitioners' failure to do so should lead to an adverse inference that the data would have shown, as Qwest's data suggests, that MCI is the largest provider of wholesale special access, other than Verizon, to Qwest and other carriers in the State of New Jersey.

In Qwest's view, the following conditions are needed to remedy what it sees as the proposed merger's unlawful effects:

- Divestiture of overlapping local assets is necessary to sustain (to some degree) the competitive pressure placed on Verizon in the wholesale loop and transport market.
- Divestiture of local MCI facilities and associated customers to mitigate the harmful ramifications of this merger.
- The Board should require Verizon to agree to offer wholesale customers special access pricing protections.
- As a safeguard, the Board should withhold its approval until the merged entity agrees to offer special access and other services in New Jersey at the same rates, terms and conditions that it receives when it purchases equivalent services outside the Verizon region.

- The Board also should withhold its approval until Verizon agrees to give its wholesale customers the option of terminating their existing contracts with it for service in New Jersey without incurring termination penalties for a period of 12 months after the merger closes.
- For VoIP services to serve as a true alternative to POTS, Verizon it must be required to provide stand-alone DSL on definite and reasonable terms, in order to allow customers, current and former, to freely order the DSL product to package with their own VoIP service of choice.

DISCUSSION

After a thorough review of the positions of the parties and the evidentiary record, the Board concludes that the merger will generally produce positive benefits for telecommunications competition in New Jersey. However, we also find that with respect to certain market segments, harm to competition could result from the merger as currently constituted. Therefore, pursuant to the its authority under N.J.S.A. 48:2-51.1, the Board now finds it necessary to condition its approval of this merger on petitioners' undertaking certain narrowly tailored actions designed to mitigate these harms, as set out more fully below.

As a threshold matter, it should be noted that this Board has long sought to encourage and nurture meaningful, sustained competition between telecommunications carriers in New Jersey. This goal is codified at N.J.S.A. 48:2-21.16(a)(4), which calls for diversity of supply of telecommunications services and products throughout the State (and predates the federal Telecommunications Act of 1996 by some five years). Thus, the Board is not only required by State law to analyze the impact of this merger on telecommunications competition, it is also required to affirmatively facilitate such competition for the public benefit.

With these goals in mind, we look at the record in this case and conclude that the merger of Verizon and MCI would in general benefit telecommunications competition in New Jersey. As petitioners point out, the merger should have the effect of bringing together two companies with broadly complementary assets.[14] The record demonstrates that the combination of MCI's base of large enterprise and government customers and Internet Protocol ("IP") based network with Verizon's robust local network and base of residential and small business customers should result in a more capable company that is better able to provide new and diverse services than either Verizon or MCI by itself. The Board agrees (and no party appears to dispute) that the combined company should be in a stronger financial position than either petitioner on its own. An influx of Verizon capital to MCI's subsidiaries should also place them in a stronger position and benefit their current customers.[15] The Board expects that such financial fortitude will result in added network investment in New Jersey and nationwide, as well as newer and more rapidly deployed services for New Jersey enterprise

[14] Pet.I. at 15
[15] Pet.I at 18

consumers. Indeed, as petitioners forthrightly state, their desire to provide more attractive products and services to enterprise customers in this increasingly competitive market segment is the primary rationale for the merger.[16]

We see this potential for added investment in New Jersey facilities as crucial to delivering tangible benefits to New Jersey telecommunications consumers and the economy of this State. The combined entity's enhanced ability to utilize such investment to build its network and produce more services for New Jersey businesses should, in the long term, stimulate economic activity that will benefit the State.

However, the Board must determine whether such benefits can be delivered without long-term cost to competition. To this end, CCG and the RPA urge the Board to utilize the protocol established by the DOJ/FTC Merger Guidelines. These Guidelines set forth a five-step analytical framework for determining, among other things, whether a particular company has or will acquire market power as the result of a merger. The Guidelines also purport to measure whether a particular product and geographical market is "concentrated," and thus indicative of anticompetitive harms resulting from a merger. This measurement is assisted by means of the HHI, a numerical measure of market concentration.

Pursuant to the framework set forth in N.J.S.A. 48:2-51.1, the Board has historically undertaken a broad and flexible analysis of a merger's effect on competition, which employs (as the federal Merger Guidelines themselves recommend) the application of regulatory experience and judgment to a diverse range of factual circumstances. These may include, but not be limited to, the degree to which a merging party's operations are tied to substantial physical assets in this State. The Board acknowledges the general acceptance of the Merger Guidelines and HHI, and believes that these analytical tools can be considered in conjunction with other potentially mitigating factors. In this particular proceeding, such factors may include the effects of the legacy of regulation over Verizon, a Regional Bell Operating Company ("RBOC"), the extent of network overlap, MCI's role as supplier of wholesale circuits and its influence on wholesale pricing, and the availability and substitutability of intermodal alternatives, and, importantly, the potential benefits of the transaction. While cognizant of Verizon's still dominant position in certain segments of New Jersey's telecommunication market, all such factors must be considered by the Board deciding whether to approve this merger.

We also note that the Antitrust Division of the DOJ has reviewed this merger pursuant to section 7 of the Clayton Act, 15 U.S.C. §18, which prohibits mergers that are likely to substantially lessen competition. The Antitrust Division reviewed the proposed merger, using the federal Merger Guidelines, and entered into a consent decree with petitioners.[17] Under this consent decree, petitioners agreed to divest certain assets in the form of Indefeasible Rights of Use ("IRUs") for loops and transport necessary to reach certain buildings where only Verizon and MCI had direct connections.

---

[16] Pet.I at 16

[17] United States v. Verizon Communications, Inc., Civil Action No. 1:05CV02103, Final Judgment (D.D.C. filed October 27, 2005)(DOJ-Verizon/MCI Consent Decree)

The FCC also conducted a review of the merger which was informed by, but not limited to, antitrust principles.[18] It approved the merger, finding that, in light of the conditions set forth in the DOJ consent decree, it was unlikely to have anticompetitive affects in key markets, but also accepted certain voluntary commitments from petitioners related to, *inter alia*, special access and stand-alone DSL.

As with the FCC, the Board's review in this case is informed, but not strictly limited by, the strict five-step Merger Guideline analysis, although in other merger reviews, a greater reliance may be appropriate. The individual circumstances in each case, including such factors as the level of physical infrastructure at issue, determine which analytical tools are appropriate. The DOJ's use of the HHI as an analytical trigger for greater analysis of market concentration may or may not be apt or sufficient in all cases in which the Board is called upon to review a merger. However, here the Board need not take the formal step of identifying strictly delineated multiple product and geographic submarkets pursuant to the HHI. The Board has routinely defined the relevant telecommunications markets in New Jersey by dividing them between enterprise and mass market customers throughout the State. We see no reason to deviate from this basic framework in the instant case, except to acknowledge the retail and wholesale components of the enterprise market that are relevant here. Although we decline to formally delineate discrete submarkets to the extent advocated by certain parties herein, we remain cognizant of the fact that the enterprise market may contain a considerable diversity of commercial entities and practices which may be impacted by this merger to varying degrees.

Given this recognition, we also do not find it necessary to formally delineate a mid-sized business market and conduct a separate analysis of merger impacts with respect thereto. Indeed, the FCC itself was unable to discern, from a considerably larger record than that put forward in this case, an industry-wide consensus as to how to differentiate one enterprise submarket from another.[19] A broader, more encompassing analysis of the enterprise market than that set forth by the CLECs can still take into consideration intramarket distinctions, and will not blind the Board to any potential dangers to competition caused by the merger that are experienced unevenly within the enterprise market itself.

Petitioners maintain that sufficient competition exists in all communications markets (enterprise, mass, retail, wholesale) to discipline the merged company's behavior. While competition no doubt exists, the Board does not believe that it exists to an equal extent in all market segments. We agree with the CLEC intervenors that the enterprise retail market probably contains a range of businesses and suppliers with divergent enough characteristics so that it should not be considered one monolithic market for the purposes of this review. This would appear to be especially true with respect to the number and variety of enterprise market suppliers. While, as a general proposition, it may be true that competitive suppliers of telecommunication services attempt to serve

[18] I/M/O Verizon Communications, Inc. and MCI, Inc., Applications for Approval of Transfer of Control, WC Docket No. 05-75, Memorandum Opinion and Order, FCC Docket No. 05-184 (released November 17, 2005) ("FCC Merger Approval Order")
[19] FCC Merger Approval Order ¶61

as many types of customers as they can, we tend to agree with CCG that many of the competitors that find it worthwhile and profitable to cater to the largest business customers are not inclined to serve smaller businesses, even if they are capable of doing so from a technical point of view. Indeed, MCI itself made such a decision, since, as petitioners freely admit, it concentrated its competitive strategy on large, rather than mid-sized enterprise customers, though there would appear to be no technological limitation dictating this course of action.[20]

Enterprise Competition – Retail and Wholesale

While we recognize that the enterprise market in New Jersey is comprised of both a retail and wholesale component, the provision of landline retail services by CLECs is largely dependent on the provision of wholesale facilities by the owners of such facilities. Therefore, an analysis of the merger's impact on wholesale services necessarily encompasses its impact on retail services. Put another way, any wholesale-based remedy designed to alleviate competitive harms in the enterprise market should also alleviate harm to the retail side of that market. We therefore concentrate our attention on this merger's potential anticompetitive impact on the market for the fiber facilities leased by CLECs from petitioners at wholesale to serve business customers in New Jersey.

With respect to these facilities, the record indicates that competitive harm could result from the merger as currently structured. Qwest convincingly demonstrates that CLECs such as itself depend heavily on the wholesale special access services provided by Verizon and, to a lesser extent, MCI, in order to provide retail voice service to enterprise customers.[21] These services may be comprised of loops, interoffice transport, or a combination of the two. MCI's role in the provision of wholesale services, while small in comparison to Verizon's, is significant from the CLEC point of view. As pointed out by Qwest, MCI is present in at least 39 of Verizon's 206 New Jersey wire centers, in areas where customer concentration and resulting profitability are likely to be highest.[22] MCI was, at least until the advent of this merger, also a significant reseller of leased Type II and Type IV circuits to other CLECs in competition with Verizon's special access in New Jersey.[23] Qwest itself relies on MCI as its second most important provider of special access in New Jersey after Verizon.[24] The record indicates that MCI's special access footprint and level of investment in this State is significant and, at least with respect to the enterprise market, forward-looking.[25]

Because we find that MCI plays a notable role as a provider and, at least until recently, a reseller of wholesale special access, we also accept the premise, asserted by the CLECs, that MCI's provision of special access acts, to some degree, as a pricing

[20] McMahon Initial Test. at 28
[21] Qwest I at 14-16
[22] Qwest I at 20
[23] Qwest I at 22
[24] Qwest I at 20
[25] Qwest I at 24-25

constraint on Verizon's provision of such services.[26] But for this merger, this restraining influence would become even more important in light of the FCC's recent decision to release ILECs from many of their network element unbundling obligations, including the obligation to provide the UNE Platform and high capacity loops to CLECs in certain areas at cost-based rates.[27] UNE-P has long served as a preferred vehicle for CLEC entrance into the local telecommunications market. With shrinking access to UNEs, CLECs will become more reliant on special access services to gain "last mile" connectivity to enterprise customers over the long term.[28]

Thus, the existing overlap between Verizon and MCI's wholesale transport and loop networks, where there are also few if any alternatives for CLECs seeking to provide service, is the main source of this Board's concern regarding the anticompetitive affects of this merger. This concern is bolstered by other evidence in the record. We note that by the HHI or any geographic or business segment measure, this merger will increase the combined entity's enterprise market concentration for wholesale facilities beyond the level that currently exists for Verizon or MCI alone.[29] Moreover, we do not accept outright petitioners' oft-stated premise that such market concentration, to the extent it exists at all, is mitigated by the presence of extra wholesale facility capacity, rather than the actual provision of service by competitors. We recognize that alternative networks do exist in New Jersey, and that the owners of these networks may be poised to fill in the gaps left by MCI at some point. However, we also agree with the CLEC intervenors that a carrier's registration of equipment in a particular wire center or building does not *per se* indicate that it is ready, willing and able to provide special access service to any CLEC, whatever its size or market niche.[30] While fiber deployed to reach large enterprise customers may eventually be used to diversify to serving smaller customers with lesser telecommunications needs, we do not view this process as necessarily inevitable or timely from a competitive point of view.

Similarly, we do not accept that the state of intermodal competition, as it currently stands in New Jersey, sufficiently mitigates the enterprise market concentration in wholesale or retail services caused by this merger, though it may do so in the future. Clearly, intermodal alternatives to wholesale services have made some inroads into the consumption patterns of enterprise customers. Moreover, as petitioners themselves argue, the key to determining whether a service is an economic substitute for another is whether, in the eyes of consumers, the two services are not identical but similar enough

---

[26] Ibid; Conv.I at 3, 28
[27] Conv.I at 29
[28] We are less convinced that MCI exercises similar pricing restraint over Verizon as a large consumer of Verizon special access (except, as referred to above, in its role as a reseller of such services). The record does not contain compelling evidence indicating that MCI routinely obtained significant volume or term discounts that were passed on by Verizon to its other CLEC customer.
[29] CCG.I 25-28
[30] Implicit in this conclusion is our determination, contrary to petitioner's argument but in accordance with the FCC's, that the economically relevant geographic market for purposes of determining concentration in wholesale special access service is the individual building, since enterprise customers are unlikely to change locations simply due to a lack of wholesale fiber alternatives at their current location. See FCC Merger Approval Order ¶28

so that a significant nontransitory price change in one will affect consumption of the other.[31]

However, the record does not indicate that established intermodal technologies such as fixed wireless and emerging technologies such as WiMAX, VoIP and cable telephony are currently viewed by significant segments of the enterprise market as similar enough to meet this test. Wireless minutes of usage may indeed be gradually replacing wireline minutes, but to the extent that businesses view wireless as an enhancement of their wireline service rather than a substitute, such that they still seek the cheapest, most effective wireline service available, petitioners' post-merger dominance of the wireline market is still of concern to this Board. The RPA and intervenors convincingly argue that, at least in the enterprise market, wireless service should not be, and is not, viewed as an economic substitute for wireline service by medium and large business customers, at least for primary access lines.[32]

Similarly, we view emerging technologies, such as WiFi, WiMax and cable telephony, as important developments that may, in due time, become viable economic substitutes for retail wireline service in the enterprise market, but are not currently. The record indicates that cable telephony penetration in all New Jersey markets is very low, possibly under 1 percent of the enterprise market, and may have leveled off.[33] Petitioners' citation to cable industry data discussing the number of homes passed does not belie this conclusion.[34] Nor do the purported future plans or capabilities of various companies to offer telephony over coaxial cable or power lines at indeterminate future dates cause us to believe that this technology is presently a substitute for wireline service. Moreover, WiFi and WiMax currently have limited range and/or availability, and are not widely deployed.

The Board has long viewed VoIP as an important emerging technology that could, in the long term, radically alter the way American individuals and businesses use telecommunications services. The key question is whether the use of VoIP is currently, or will be in the very near future, sufficiently widespread to exert price discipline on wireline service. We conclude, based on the record before us, that it is not, in either the enterprise or, as discussed below, mass markets. The high-speed broadband connection necessary for VoIP adds cost, and the record indicates that VoIP currently lacks the service quality and consistency necessary to fulfill the needs of business customers. Indeed, the record indicates that in the case of at least one New Jersey VoIP provider, Verizon, VoIP penetration of the business market is low or non-existent.[35] Given these facts, we do not currently view, nor do we believe that most enterprise customers currently view, VoIP as a sufficiently close substitute for basic wireline telephone services in the enterprise market for VoIP to mitigate petitioners' market concentration.

---

[31] Taylor Rebuttal Test. at 27
[32] Baldwin Rebuttal Test. at 45-46; Conv.I at 22; Conv.R. at 9-10
[33] Conv.I at 14-16
[34] Pet.I at 26
[35] Conv.I at 20-21

Petitioners urge that we account for intermodal competition in determining the competitive impact of this merger, and we do so herein. However, acknowledging the increasing presence of such technologies is not the same as concluding that they sufficiently mitigate competitive harms created by the merger by constraining ILEC wireline pricing. In fact, we conclude that in New Jersey such alternative technologies have not yet had this effect in the business market. Given this level of market concentration enjoyed by the combined entity, unmitigated by an adequate presence of alternative wholesale providers or intermodal alternatives, harm to retail rates can be presumed to follow.

Mass Market

We harbor similar concerns regarding market concentration in the mass market of residential and small business customers, although not to the same degree as in the enterprise market. The record indicates that UNE-P has been an important entry vehicle for CLECs in the local retail market, and that Verizon's demonstrated line loss over the last three years is due in large part to the UNE Platform's federally mandated existence.[36] Now that this mandate has been withdrawn, the combined company emerging from this merger (as well as Verizon itself absent the merger) can be expected to win back many of these lines from its smaller competitors. At the very least, the majority of CLECs that are unwilling or unable to construct their own facilities will be obliged to negotiate agreements with Verizon at much less advantageous terms than those previously based on State-imposed TELRIC rates. Any resulting loss of market share by these CLECs will in turn increase Verizon's market concentration beyond its already high level.

Given this development, it is not surprising that MCI has made a seemingly irrevocable decision to accept a declining share of the residential and small business (mass) market, and to cease marketing efforts to arrest the decline. We find convincing MCI's assertion that the loss of UNE-P and the marketing restrictions resulting from the imposition of a nationwide do-not-call list have rendered MCI unable to compete with Verizon on price for residential customers. MCI's residential customer base is declining precipitously.[37] It has discontinued residential marketing and closed service centers. Its agreements with Verizon for UNE-P undoubtedly add costs to its local and long-distance bundled services which will be passed on to residential customers, rendering such bundles uncompetitive. We therefore accept petitioners' argument that such an erosion effectively spells the end of MCI as a competitive provider of residential landline services in New Jersey for the foreseeable future. No party to this proceeding has presented a compelling reason to doubt this assertion.

Because of MCI's apparent withdrawal, we are less concerned about the effects of this merger on the mass market over the long term than on the enterprise market. Simply put, if MCI is not a long-term direct competitor with Verizon for such customers, MCI's removal from this market via the merger cannot be said to harm mass market

[36] McMahon Rebuttal Test. at 4-5; RPA I at 22
[37] McMahon Initial test. at 18-19

competition, assuming MCI follows through with its plans to remove itself as a mass market competitor, upon which the record does not cast doubt.

We are less convinced that intermodal alternatives, as described by petitioners, are currently exercising price discipline on Verizon's mass market wireline services to the extent argued by petitioners. As argued by the RPA, wireless service is currently viewed by the majority of its users as a supplement to wireline service rather than a substitute.[38] Cable telephony, as described above, may potentially be accessible to numerous households in New Jersey, but has not heretofore been embraced on a wide scale in the mass market.[39] VoIP, while showing great potential as an intermodal alternative to wireline service, suffers from its dependence on a bottleneck facility, the broadband connection, which is not currently used by a significant percentage of POTS customers.[40] The need to acquire this connection adds cost to VoIP service, and in the foreseeable future may be beyond the ability of such customers to acquire.

We agree in principle with petitioners that competition takes place on the marginal segment of a market, not the average. Thus, it is not necessary for all or even most wireline subscribers to switch to intermodal alternatives for those services to exert downward pressure on wireline. However, while repeatedly emphasizing the aforementioned principle in the abstract, petitioners never actually opine as to how large a percentage of "early adopters" is required for pricing discipline to occur. In the case of all the aforementioned technologies except wireless, market penetration rates are very low. Thus, we are not willing to accept on this record that intermodal technologies such as VoIP, WiFi, WiMAX and cable telephony currently constrain Verizon's wireline pricing to a meaningful degree.

Nonetheless, we find that the mass market is unlikely to suffer competitive harm due to this merger, because MCI has essentially ceased to compete vigorously therein. MCI's actions will inevitably increase Verizon's market concentration, and would do so even absent the merger. Thus, any ongoing or increased concentration in the New Jersey residential and small business market cannot likely be ameliorated by placing restrictions on the proposed merger.

Conditions

Because of our concerns regarding enterprise market concentration, we believe that the public interest will be furthered by the imposition of narrowly tailored conditions to approval of this merger. Indeed, we are obligated under State law to take such action in order to protect the state of competition in New Jersey and, ultimately, New Jersey ratepayers. While we reject most of the broad panoply of conditions proposed by the RPA and CLEC intervenors as unnecessary, we find that three specific substantive conditions are required to address the potential harms we have identified as likely to arise from this merger as currently structured.

[38] RPA I at 36
[39] Conv.I at 14-15
[40] Conv.I at 18-21

In order to ensure that any enterprise market concentration resulting from this merger does not harm the competitive wholesale (and therefore retail) environment in New Jersey, we hereby order that Verizon must implement its commitment to the FCC to not seek any increase in New Jersey approved rates for unbundled network elements for a period of two years from the merger closing date. Moreover, we order that the combined entity must not increase rates paid by MCI's existing customers (as of the merger closing date) for the DS1 and DS3 (*i.e.* high capacity) wholesale metro private line services that MCI provides in Verizon's incumbent local telephone company service areas above their level of the merger closing date for a period of 2.5 years.

These conditions, which are imposed pursuant to the Board's independent authority under N.J.S.A. 48:2-51.1 to condition its approval of mergers on actions take by petitioners, are sufficient to ensure that competition for wholesale facilities remains viable. As stated above, CLECs rely on both UNEs and special access services provided by Verizon to serve their customers. MCI's network, while certainly not as ubiquitous as Verizon's, plays an important role in some areas of this State by providing alternative special access facilities to CLECs and by constraining Verizon's wholesale prices for such services. Alternative facilities may already be available in some areas and for some segments of the business market, and will presumably become increasingly available in response to MCI's departure. Similarly, intermodal alternatives, while not prevalent enough in the enterprise market to be considered substitutes for wireline service currently, can be expected to enjoy increased acceptance as time goes by (although the exact pace of this progress cannot be predicted with precision). Therefore, a period of price stability for wholesale services will ensure that CLECs are not unduly harmed by market concentration before these developments occur.

In determining the appropriate timeframes for these measures, which are designed as temporary protections from the competition "shocks" created by the removal of MCI from the wholesale marketplace, we are required and entitled to exercise our best discretion, since the question is "primarily of judgmental or predictive nature."[41] Given the, by all accounts, rapid development of new technologies in this industry since the enactment of the Telecommunications Act in 1996, including the advent and increasing adoption rate of non-wireline telephony, we believe that mandating a 2 to 2.5 year period of rate stability for UNEs and special access, rather than the five-year period proposed by Conversent and the RPA, strikes the appropriate balance between facilitating the benefits of this merger and protecting the competitive positions of the CLECs.

We also believe that the market concentration created by this merger may be further ameliorated by facilitating the use of the very intermodal alternatives cited by petitioners as substitutes for wireline service. In particular, the record indicates that one particularly promising potential substitute, VoIP, is dependant on the customer's leasing of a broadband connection. This represents a potential bottleneck over which the new company may exercise considerable control, since a commonly used broadband facility

[41] See Application of N.J. Bell Tele., 291 N.J. Super. 77, 89 (App. Div. 1996)

is digital subscriber line over copper owned by Verizon. We agree with the RPA that, given Verizon's and MCI's combined wireline market share, it is not conducive to a competitive VoIP environment in New Jersey for the combined entity's DSL product to be inexorably bundled with its wireline voice service. We therefore acknowledge and adopt as an express condition to this Order petitioners' commitment to the FCC to offer stand-alone DSL service for a period of two years. While the record does not indicate any impairment to mass market competition as a result of this merger, this condition will provide a positive benefit to mass market customers in New Jersey. This service should be offered for two years after the date Verizon can offer this service on 80 percent of its DSL-equipped lines in its New Jersey territory. The Board reserves the right to review the VoIP market at the end of this two-year period to determine whether additional regulatory measures should be considered.

The Board rejects the raft of additional conditions proposed by the RPA and CLEC intervenors as unnecessary or unresponsive to harms caused by this merger. Our actions, in conjunction with the federal government's, mitigating harmful concentration in the market for special access services, are adequate given the scope of the overlap between MCI's and Verizon's fiber networks in New Jersey, which is pronounced but hardly ubiquitous. The rate freezes instituted by the Board should provide sufficient stability while CLECs reconfigure business plans and the market for alternative network providers matures. Thus, without reaching the issue of whether the Board has the authority to do so, we find no need on the record before us to require the combined entity to waive the current federally imposed cap on DS1 loops and transport that can be ordered to a particular building or route, or to re-price intra- and interstate special access rates to produce a return on equity of 11.25 percent. Nor, given the conditions already in place and the duration thereof, do we view as necessary the initiation of a lengthy rate proceeding to reset intrastate access charges.

Similarly, we decline to order Verizon to recalculate wire center locations where §251 high capacity loops, transport and dark fiber UNEs are provided, treating AT&T and MCI as non-qualifying collocators. While perhaps defensible from a policy perspective, we view this proposed condition as more appropriately imposed by the FCC (which has apparently done so already). The proposed recalculation would need to arise from a regulatory scheme created by the FCC and set forth in the TRRO. It would also inevitably depend upon an interpretation of that FCC order. Therefore, in the absence of a compelling demonstration of need, we decline to impose such a condition.

We also view as unnecessary the CCG's proposal that CLECs be allowed to "reinitialize" all existing interconnection agreements ("ICAs") with Verizon, alter the federally-mandated arbitration process and/or take a "fresh look" at their contracts. While we agree with the CCG that CLECs need stability to adjust to a new business environment (much of which is not the result of this merger), we view these existing ICAs as binding contracts and see no justification for disturbing them on the record before us. We also doubt that Congress and the FCC intended the states to be able to limit the subjects of §252 arbitrations to the extent suggested by the CCG. The arbitration process is indeed expensive and time consuming, as pointed out by the CCG, but these facts are not the result of this merger. The Board has, where appropriate, consolidated and simplified arbitration proceedings as much as possible, and it will continue to endeavor to minimize the expenditure of time and expense for all parties.

We note this Board has, in other contexts, already considered some of the conditions suggested by the CCG and determined that it lacks the authority to take such action. Specifically, we have declined to enforce ILEC unbundling obligations under §271 of the federal Telecommunications Act and have similarly determined, in the context of a request made outside the scope of a merger review, that we lacked the authority to impose unbundling obligations in the absence of §251 impairment.[42] Because these determinations were not made as part of a merger review, which is informed and controlled by our obligations under N.J.S.A. 48:2-51.1, CCG argues that the Board enjoys independent state authority to impose these unbundling obligations in order to mitigate the specific effects of this merger. While State law-based unbundling may be foreclosed to the Board within the Telecommunications Act framework, N.J.S.A. 48:2-51.1 affords the Board broad authority to condition its approval of a merger on the adoption of preventive measures to mitigate the harms caused in New Jersey by that merger. However, given the FCC's phasing out of UNE-P and the special access price freezes we impose today, we do not believe additional unbundling requirements are necessary or workable in order to protect competitive carriers. Thus, we do not reach the legal issue put forward by the CCG.

While we note the RPA's emphasis on stand-alone DSL, and have addressed its (and the Board's) legitimate concerns in this area, we do not believe that further pro-competition conditions are justified on this record. No evidence was put forward suggesting that a mandated flow-through of merger synergies to ratepayers is required in this case to protect competition, New Jersey employees or ratepayers in New Jersey. Moreover, we are unwilling to engage in the extreme step of ordering Verizon to offer broadband or DSL services (heretofore deemed competitive or otherwise subject to federal regulation) at POTS rates. POTS rates remain regulated by this Board pursuant to specific, compelling and longstanding policies, not least of which is the need to ensure that basic, unadorned telephone service is within reasonable reach of all New Jersey citizens. The record in this case is far from demonstrating that the same or similar policies apply to broadband or DSL services at the present time. We are unwilling to assume, without more, that they do. Nor are such rates necessary to prevent cross subsidization between Verizon's regulated and deregulated services. While this practice is indeed inimical to competition, it is already prohibited by statute and may be the subject of a Board-ordered independent audit.[43] We do not perceive a need on the current record to heighten these existing protections.

We believe that the adoption of the three aforementioned conditions to our approval of this merger will be sufficient to ensure that no undue harm to the competitive telecommunications environment in New Jersey results from this merger, and to further ensure that positive benefits result therefrom. As more fully discussed below, we will

[42] See I/M/O Implementation of the Federal Communications Commission's Triennial Review Order, Order, BPU Docket No. TO03090705 (March 24, 2005).
[43] N.J.S.A. 48:2-21.18(c),(d)

also require petitioners to provide an annual certification to this Board that the combined company is in full compliance with the merger requirements imposed by the FCC and the DOJ, and to cooperate fully with any investigation by the Board evaluating petitioners' continued compliance with those federal requirements. Any other conditions proposed by the parties have either been imposed by the federal authorities reviewing this merger or are unnecessary under N.J.S.A. 48:2-51.1 and need not be imposed by this Board.

2. Merger's Impact on Rates of the Ratepayers Affected by the Acquisition of Control

PARTIES' POSITIONS

Petitioners

Petitioners assert that the transaction will not have any adverse effect on rates and should lead to lower rates over time. Petitioners state that because, in their view, the merger has virtually no horizontal effects, it will not harm competition in any market and thus competition will continue to discipline prices. Moreover, petitioners state that both Verizon and MCI's operating subsidiaries in New Jersey will continue to exist in their current form on consummation of the merger at the parent company level, and the merger will therefore have no harmful effects on the rates, terms or conditions of service provided by the subsidiaries. As the combined company is able to achieve the efficiencies and develop innovations that neither company could achieve standing alone, New Jersey customers can, according to petitioners, expect to receive better value and lower prices than they would have absent the merger.

RPA

According to the RPA, petitioners have failed to present evidence that rates will not be adversely affected. The RPA states that numerous Verizon internal documents cited in the record demonstrate Verizon's intention to raise prices. The RPA further contends that, as of May 18, 2005, Verizon imposed a $2 increase in the long distance portion of Freedom for Business month-to-month calling plans. The RPA opines that in a declining cost industry with effective competition, one would anticipate rate reductions, yet Verizon's internal documents, according to the RPA, demonstrate that it plans to increase rates.

The RPA further argues that petitioners anticipate billions of dollars in synergies, and that they are confident about their ability to achieve the predicted synergies, yet have no plans to reduce rates to flow through some share of the merger savings. According to the RPA, by "slicing and dicing" the mass market consumer into sub-markets, Verizon creates the risk that those consumers with the least amount of disposable income and the greatest inertia (*i.e.,* lowest price elasticity) become the most vulnerable to price increases and/or service quality deterioration. The RPA believes that the evidence amply demonstrates that Verizon is neglecting the low-use customer, the elderly customer, and the low and moderate income customer. The RPA further contends that the merger does nothing to remedy or prevent what has come to be known as the "digital divide".

According to the RPA, and contrary to petitioners' allegations, intermodal competition will not have a price constraining affect on rates. The RPA also argues that petitioners' reliance is ill-based because (1) unlike Verizon's local network, it is not ubiquitous; and (2) the vast majority of intramodal competition depends on access to Verizon's wholesale facilities. The RPA submits that the Board should not be misled by petitioners' unsupported allegations that intermodal alternatives are substitutes and that they will have a price constraining effect on rates. The RPA maintains that petitioners have failed to present evidence that rates will not be adversely affected.

<u>CCG</u>

CCG alleges that the merger, if approved, would result in increased rates for all concerned. Losing MCI as an independent competitor in the market for the purchase and sale of wholesale special access services will, according to CCG, have a material impact on the pricing under which smaller carriers are able to purchase, and as such resell, high capacity loops and transport to the detriment of New Jersey midsized business customers.

<u>Qwest</u>

Qwest suggests and reiterates that MCI's status as a competitive alternative to Verizon Special Access in New Jersey, coupled with its role as a substantial purchaser of Special Access from Verizon, places pressure on Verizon to keep its Special Access pricing in check. Qwest maintains that this pressure will be lost should the merger be approved as filed.

<u>Conversent</u>

Conversent argues that, as a large consumer of Verizon's wholesale services, MCI can discipline Verizon's pricing power and pass on rate savings to CLECs, who in turn could pass on rate savings to retail customers. Conversent states that MCI is among the most significant, if not the most heavily used, special access alternative to Verizon's wholesale services. According to Conversent, MCI's ability to obtain discounted special access services creates benefits to CLECs and consumers alike. Eliminating MCI will, in Conversent's view, have undeniably deleterious consequences to those CLECs that seek to compete for small to medium sized businesses in New Jersey. Retail business customers will therefore see prices rise if MCI's wholesale services are no longer available to CLECs as an alternative to Verizon's special access services. A merger with Verizon will also, according to Conversent, remove an important potential check on Verizon's pricing power for wholesale services. Conversent believes that MCI's available fiber-based network becomes very valuable to a CLEC seeking to serve small to medium-sized businesses, either over MCI-owned fiber, or over MCI's "Type II" circuits over leased facilities of other companies. Conversent believes that in New Jersey, MCI has substantial fiber loop facilities that could be used to provide wholesale services.

DISCUSSION

The Board is keenly aware that rate impact is an important concern for all parties to this proceeding, as well as all ratepayers in New Jersey. With the exception of the RPA, the parties opposing this merger view their concerns regarding rate impact through the prism of competition. In short, it is the position of the CLECs that the harm to rates caused by this merger results from decreased competition, especially in the market for wholesale services. The CLECs believe that the removal of MCI eliminates an important check of Verizon's pricing ability. Thus, the merger will, in the CLECs' view, inevitably lead to higher wholesale, and ultimately retail, rates.

We agree that the rate impact of this merger is closely linked to market concentration in the wholesale services arena. However, we have addressed this issue above, and explained in detail our concerns regarding the inevitable narrowing of the special access market created by MCI's departure. Of course, we do not espouse and facilitate competition in New Jersey for its own sake, but as the most effective and efficient way to ensure that a wide variety of services are available to New Jersey customers at the lowest possible rates. Thus, the conditions we have imposed in order to protect competition, by allowing competitors time to adapt to the new telecommunications landscape, are ultimately designed to ensure that this merger does not unduly impact rates. With respect to wholesale enterprise services, which is the primary area of concern raised by the CLEC intervenors, we believe, for the reasons provided above, that the conditions we impose herein strike an appropriate balance between protecting competition and permitting the competitive benefits of this merger to come to fruition.

As further stated above, we do not believe that the merger will have harmful effects on the rates paid by mass market customers. MCI is already exiting this market for reasons unrelated to the merger, and would likely continue to do so even if the merger was not consummated. Verizon's and MCI's operating subsidiaries in New Jersey will continue to exist in their current forms, and continue to operate under the same regulatory obligations as they would absent the merger. The Board will continue to regulate basic service to the extent necessary to ensure its continued availability and affordability to all classes of New Jersey ratepayer. Given these facts, we do not perceive any reasonable possibility on the record before us that this merger will result in the neglect of low-income or non-technological customers. While Verizon will no doubt seek to serve high-profit market segments, the record does not suggest that it seeks to unilaterally discontinue POTS. Nor would this Board likely warm to such an initiative.

We also disagree, for the reasons stated above, that the combined entity will have an obligation to pass synergy savings through to ratepayers. As we noted previously, such an obligation is unnecessary from a policy point of view in the circumstances of this merger, and would certainly run the risk of negating many of the synergies (with the corresponding benefits to New Jersey's ratepayers and economy) emanating from the merger. We therefore decline to impose such a condition.

3. Merger's Impact on the Employees of the Affected Public Utility or Utilities

PARTIES' POSITIONS

Petitioners

Petitioners' position is that the merger will not harm employees in New Jersey because: (1) employee reductions resulting from the transaction will most likely occur due to the consolidation and elimination of redundant positions; (2) the post-transaction company will likely reduce headcount in those areas in which the company is able to provide shared services more efficiently; and (3) over the long run, the synergies created by Verizon's combination with MCI should benefit employees in New Jersey by providing additional opportunities for employment.

According to petitioners, the merger will provide long-term benefits to New Jersey employees. Petitioners assert that they have established that the merger will not harm New Jersey workers, and neither the RPA nor the CLEC intervenors have been able to rebut this showing. Petitioners further contend that in addition to normal staffing adjustments resulting from attrition, retirement, and other voluntary means, employee reduction resulting from the transaction would only likely occur due to the consolidation and elimination of redundant positions. Petitioners further contend that the long-term synergies created by Verizon's acquisition of MCI are expected to greatly benefit employees in New Jersey by creating a far stronger company with a better ability to grow and prosper, both nationally and internationally, than either company would have alone. The long-term benefits for employees should, according to petitioners, be especially pronounced in New Jersey, with Verizon's recent decision to consolidate a number of positions and functions in the new Verizon Center in Basking Ridge.

According to petitioners, without any rational basis, and ignoring the fact that increased efficiency achieved through the merger is, in petitioners' view, in the public interest, the RPA urges the Board to freeze all employee positions for three years. This recommendation, in petitioners' view, is not made with regard to actual needs of the company, prudent decision-making regarding staffing, or an eye towards providing the combined company incentive to achieve operating efficiencies.

In petitioners' view, the RPA's recommendation that the combined company freeze all employee-staffing levels in New Jersey for three years is arbitrary and unwarranted. According to petitioners, this proposed condition is unreasonable because it completely undermines the combined company's ability to make decisions that maximize efficiency, which, they maintain, is no small matter given that the very purpose of Verizon's incentive regulation plan is to encourage efficient behavior.

RPA

The RPA submits that the proposed merger of Verizon and MCI would eliminate jobs for MCI's New Jersey employees, and that the proposed transaction will enrich the top executives while jeopardizing the salaries and jobs of other employees. According to the RPA, MCI's president and chief executive officer would be entitled to approximately $39 million in severance payments, and ten other top MCI executives would each be entitled to between approximately $3 million and $11 million in similar payments. The RPA argues that, as it stands, the proposed merger transaction will lead to financial gain for petitioners' top executives and for shareholders, but that petitioners' do not propose to flow through any of these gains to the mass market. The RPA also states that MCI employed approximately 40,000 employees as of year-end 2004, including approximately 800 employees in New Jersey. Petitioners, according to the RPA, anticipate reducing employees by 7,000, but have not yet estimated the impact on employment in New Jersey. However, the RPA reasons that, because approximately 11 percent of Verizon's access lines are located in New Jersey, absent any other information, the merger could lead to a reduction of approximately 700 New Jersey employees.

In the RPA's view, if Verizon is allowed to buy out its chief landline competitor, and is able to afford millions of dollars in severance payments for top executives, the Board should condition its approval of the merger on the combined company committing to at least the same level of New Jersey employees (including former MCI employees) as existed as of March 15, 2005, for three years after the merger occurs.

DISCUSSION

The record indicates that, while some job losses may occur in the short term as a result of this merger, long-term job prospects will be improved, rather than harmed. We accept petitioners' assertion that the improved prospects of the combined company, enjoying the benefits of expected synergies, investment and financial stability, will impact the job market more positively than would refusing to approve the merger.[44] We also note the positive benefits that will flow from Verizon's recent decision to relocate its company-wide operations center to Basking Ridge, New Jersey.

While we are fully cognizant of our statutory role in ensuring that this merger does not unduly harm employment in this State, we do not find support in the record for the RPA's proposed freeze of staffing levels at current levels for three years. As pointed out by petitioners, this employment level and duration does not account for the actual employment needs of the company. Moreover, while such measures may be justified under certain circumstances, the imposition of employment quotas on a company must be balanced with the possibility of negating the very merger benefits that will, in the long-term, improve employment in New Jersey. We see no need to take such action here, especially given the compromised competitive posture of MCI.[45] Just as

[44] Pet.I at 42
[45] McMahon Initial Test. at 16-20

unhindered competition by financially healthy, well-run companies is generally the best method for ensuring a vibrant telecommunications market and high employment levels in New Jersey, permitting Verizon to determine its own employment levels is, we believe, the best way to promote these goals. As we recently stated in our review of the SBC-AT&T merger, we are unwilling to sacrifice these long-term policies for short-term employment quotas on the record before us, and are not obligated to do so under relevant State law.

4. Merger's Impact on the Provision of Safe and Adequate Utility Service at Just and Reasonable Rates

PARTIES' POSITIONS

Petitioners

Petitioners submit that the transaction will not impair and, in fact, will improve the combined company's ability to provide safe and adequate service at just and reasonable rates. They assert that the combination of these complementary assets will create a stronger competitor, better able to deliver a full suite of high quality services to business and consumers than either company could provide alone. They also maintain that nothing about this merger will alter the Board's existing service quality standards, reporting requirements or other means of regulating service quality.

Petitioners state that the transaction will not impair and, in fact, will improve the combined company's ability to provide safe and adequate service at just and reasonable rates. Petitioners further state that the transaction will occur at the parent holding company level, and thus will have no structural impact on any of the MCI or Verizon subsidiaries operating in New Jersey. According to petitioners, the combined company's New Jersey subsidiaries, therefore, will continue to be able to provide safe and adequate service at just and reasonable rates. In petitioners' view, market forces will ensure that the combined company does not reduce service standards. Petitioners state that the transaction will allow Verizon to make a sustained investment in MCI's Internet backbone, network facilities, and IT systems, thereby enhancing the quality of the services provided over those facilities. According to petitioners, nothing about this merger will alter the Board's existing service quality standards, reporting requirements or other means of regulating service quality.

Petitioners assert that neither the RPA nor Conversent offers a sufficient basis in support of their demand that the Board modify Verizon's already stringent service quality standards by imposing additional service quality monitoring and reporting requirements. According to petitioners, the record does not support a claim that Verizon's service quality is somehow at risk of deteriorating due to the merger. Petitioners further contend that there is no evidence to suggest that the combined company will reduce service quality, and that, in any event, the merger will not affect the incentive to cut costs.

Conversent

Conversant asserts that service quality is expected to deteriorate further as Verizon devotes resources away from maintenance of its legacy network in New Jersey. Conversent points to a specific Verizon document[46] in support of its assertion that the amount of "Gross Capital Expenditures" for New Jersey has been cut in half, from 1999-2004 (going from $1.0 billion down to $409 million). Conversent believes that if the shift in dollars on local infrastructure is to pursue the "higher growth" markets, such as through fiber-to-the homes, then it only logically follows that necessary repairs and service quality over Verizon's legacy copper network will suffer.

RPA

The RPA submits that the merger could directly affect the quality of service that Verizon provides to residential and small business consumers, particularly those that Verizon perceives as being the least profitable to serve and/or least likely to migrate from Verizon. According to the RPA, Verizon's market segmentation will also adversely impact service quality. The proposed transaction increases Verizon's incentive to pursue new revenues from global customers and to reduce operating expenses associated with serving low-margin customers.

The RPA asserts that it is imperative that POTS rates not subsidize Verizon's competitive forays and that New Jersey not consist of two distinct populations: the "haves", and the "have-nots." The RPA contends that the petitioners bear the burden of proving that all consumers benefit from the merger. According to the RPA, numerous Verizon documents demonstrate Verizon's interest in carving up the market and catering to the most lucrative segments. The RPA further believes that Verizon's numerous marketing and business planning documents underscore a critical public policy concern that those who do not subscribe to broadband will be left behind as society transforms the way it communicates, conducts business, educates, and links citizens to each other and to institutions. In the RPA's view, petitioners have not proposed a single benefit for those at risk of being left on the other side of the "digital divide".

The RPA also believes that what it characterizes as Verizon's market segmentation will adversely impact service quality in New Jersey. According to the RPA, internal marketing studies prepared by Verizon show that the company intends to ignore low-use, low-value customers who are therefore vulnerable to the effects of this merger. The RPA believes that Verizon's own internal documents demonstrate that, with the exception of what the RPA refers to as a "token low-income/high-diversity community," Verizon is intentionally targeting its fiber-to-the-premises deployment to affluent areas.

---

[46] Conversent Exhibit 6

According to the RPA, this pattern is occurring throughout Verizon's footprint, including in New Jersey.

According to the RPA, the proposed transaction increases Verizon's incentive to pursue new revenues from global customers and to reduce operating expenses associated with serving unwanted low margin customers. In the RPA's view, if petitioners are confident about their ability and willingness to deliver quality service to households and businesses throughout the State, they should not mind being held accountable to geographically disaggregated reporting mechanisms and financial standards. The RPA further asserts that the Virginia Commission recently adopted new LEC Service Quality Rules and urges the Board to follow suite.

DISCUSSION

No evidence in the record before us indicates that this merger will impair existing levels of service quality. Conversent points to alleged reductions in service quality spending by Verizon over the last six years, but has not shown how this reduction, in and of itself, has led to a diminution of service quality.[47] Nor does Conversent demonstrate how such reductions were caused by or will be exacerbated by this merger. Furthermore, existing service quality standards, with all existing financial safeguards intact, will remain in effect following the merger. In short, Verizon will still be obligated to provide safe and adequate service at just and reasonable rates, as already defined by the Board.

We therefore reject the notion that revised service quality standards should be imposed to ameliorate harms caused by this merger, as asserted by the RPA and Conversent. The record is void of any evidence suggesting that the combined entity's service quality, which, as stated above, will continue to be subject to Board regulation, will be impaired by this merger. Should such a diminution indeed take place, the Board can and will address it at the appropriate time.

Moreover, as stated above, Verizon will also continue to be prohibited by statute from subsidizing competitive services with revenues from noncompetitive services. While we share the concerns of the RPA regarding the so-called "digital divide," and the possibility of certain classes of New Jersey ratepayers being neglected by the advent of broadband services and intermodal alternatives, no evidence suggests that these potential trends are made more likely by this merger. MCI's decision to gradually withdraw from the residential POTS market belies the RPA's assertion that this merger will exacerbate the aforementioned circumstances. Moreover, as part of our review of this transaction and as explained above, we have concluded that new technologies are not, at this stage, viable substitutes for POTS. Therefore, the RPA's concerns about segments of the public being "left behind" by these technologies are, at best, speculative and premature. We do not believe that they are sufficiently related to this merger to be addressed further herein.

[47] Conv.I at 35-36

5. Pending Motions

The Board has considered the pending motions by petitioners (seeking to strike surreply comments of RPA, Qwest and CCG or, in the alternative, seek Board consideration of petitioners' argument in response thereto) and by Qwest (seeking to strike petitioners' references to a regulatory decision in another state or, in the alternative, seek Board consideration of Qwest's argument in response thereto). While cognizant of the procedural guidelines set forth in this proceeding, we believe that the fullest possible record enables the Board to make an informed decision regarding the important issues in this case. We see no prejudice to any party by allowing these comments to become part of the record, as well as the substantive responses thereto submitted by petitioners and Qwest, respectively. For these reasons, we deny the moving parties' motions to strike and include their substantive responses as part of the record of this case.

However, we also decline to grant the relief sought by the RPA, Qwest and the CCG, which urge the Board to adopt wholesale the DOJ's merger conditions, as well as the voluntary commitments made by petitioners to the FCC, as State merger conditions in this proceeding. We have imposed certain conditions on our approval of this merger based on the state-specific record before us which closely track some of those agreed to by petitioners as part of their settlement with the DOJ, in order to address certain merger impacts in this State. We also note that, to the limited extent necessary, we have relied on DOJ analysis to inform our own conclusions regarding the impact of this merger on competition, and that some of the measures required to be taken by petitioners pursuant to their settlement with DOJ will positively impact the state of competition in New Jersey. It is therefore appropriate that, as part of our approval, we require petitioners to provide an annual certification to this Board that the combined company is in full compliance with the FCC's and DOJ's requirements. Accordingly, petitioners shall cooperate fully with any investigation by the Board evaluating petitioners' continuing compliance with said requirements.

We do not, however, see the need to further adopt federally-imposed conditions into our decision wholesale, as urged by the RPA, Qwest and the CCG. Such action is not necessary or appropriate in this case given the differing records before this Board, DOJ and FCC, as well as the disparate standards of legal review used by each agency.[48] Rather, we believe that the carefully tailored conditions imposed herein as a matter of State law strike the correct balance between allowing the positive benefits of the merger to come to fruition and protecting those parties who may be negatively impacted thereby.

The Board also finds that Qwest's pending motion, filed October 14, 2005, to admit certain documents into the record, including, but not limited to, the initial and reply testimonies of Pamela Stegora Axberg, being uncontested, should be granted.

---

[48] See N.J.S.A. 48:2-51.1; 15 U.S.C. §18; FCC Merger Approval Order ¶18

CONCLUSION

The record demonstrates that this merger will positively impact the telecommunications market in New Jersey by creating to a stronger, more stable company that will be better able to deliver services to New Jersey customers and employ the citizens of this State. The record also shows that the imposition of a "stand-alone" DSL requirement on Verizon will positively impact the availability of VoIP services in New Jersey, to the affirmative benefit of telecommunications competition and New Jersey consumers. Moreover, the proposed merger will cause no adverse impact to ratepayers, safe and adequate service at reasonable rates or employment levels in New Jersey.

Accordingly, after a thorough review of the record before it, and based on the foregoing findings of fact and conclusions of law, the Board HEREBY AFFIRMS the Provisional Orders issued by Commissioner Frederick F. Butler in this proceeding. The Board further DENIES the pending motions to strike filed by petitioners and Qwest in response to surreply submissions by the RPA, Qwest and the CCG, and petitioners' references to a Pennsylvania regulatory ruling, respectively. The Board HEREBY ADMITS into the record of this proceeding petitioners' and Qwest's substantive responses thereto. The Board also ADMITS into the record the documents set forth in the October 14, 2005 motion by Qwest for admission thereof. The Board further DENIES the motions of the RPA, Qwest and the CCG for the Board to adopt all merger conditions imposed on and/or agreed to by petitioners, the Department of Justice and the Federal

Communications Commission. The Board HEREBY GRANTS the Joint Petition of Verizon Communications, Inc. and MCI, Inc. for approval of the proposed merger, subject to the conditions set forth below and as elaborated upon more fully herein:

Verizon is not to seek any increase in state-approved rates for unbundled network elements for a period of two years from the merger closing date;

- Verizon/MCI must not increase rates for a period of 2.5 years for MCI's existing customers of the DS1 and DS3 (*i.e.* high capacity) wholesale metro private line services that MCI provides in Verizon's territory above their level as of the merger closing date;
- Verizon must deploy and offer stand-alone DSL service, without requiring customers to purchase voice telephone service, for two years;
- Verizon must provide an annual certification to the Board that the combined company is in full compliance with the FCC's and DOJ's merger requirements. Petitioners shall cooperate fully with any investigation by the Board evaluating petitioners' continuing compliance with said requirements.

DATED: 4/12/06

BOARD OF PUBLIC UTILITIES
BY:

JEANNE M. FOX
PRESIDENT

FREDERICK F. BUTLER
COMMISSIONER

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities

SERVICE LIST

I/M/O THE JOINT PETITION OF VERIZON COMMUNICATIONS INC. AND MCI, INC. FOR APPROVAL OF MERGER

DOCKET NO. TM05030189

Jane Kunka, Policy Advisor
To Commissioner Connie O. Hughes
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
jane.kunka@bpu.state.nj.us

William Agee, Special Counsel to the President
and Assistant Secretary of the Board
Office of the Secretary
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
william.agee@bpu.state.nj.us

Victor Fortkiewicz, Executive Director
New Jersey Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
victor.fortkiewicz@bpu.state.nj.us

John Garvey, Economist
New Jersey Board of Public Utilities
Office of the Economist
Two Gateway Center
Newark, NJ 07102
john.garvey@bpu.state.nj.us

Anthony Centrella, Director
New Jersey Board of Public Utilities
Division of Telecommunications
Two Gateway Center
Newark, NJ 07102
anthony.centrella@bpu.state.nj.us

James Murphy, Competitive Services and Mergers
New Jersey Board of Public Utilities
Division of Telecommunications
Two Gateway Center
Newark, NJ 07102
james.murphy@bpu.state.nj.us

Seema M. Singh, Ratepayer Advocate and Director
Division of the Ratepayer Advocate
31 Clinton Street
PO Box 46005
Newark, NJ 07101
ssingh@rpa.state.nj.us

Christopher White, Deputy Ratepayer Advocate
Division of the Ratepayer Advocate
31 Clinton Street
PO Box 46005
Newark, NJ 07101
cwhite@rpa.state.nj.us

Paul Flanagan, Deputy Ratepayer Advocate
Division of the Ratepayer Advocate
31 Clinton Street
PO Box 46005
Newark, NJ 07101
pflanagan@rpa.state.nj.us

Maria Novas Ruiz, Esq.
Division of the Ratepayer Advocate
31 Clinton Street
PO Box 46005
Newark, NJ 07101
mnovas-ruiz@rpa.state.nj.us

Susan Baldwin, Asst Deputy Ratepayer Advocate
17 Arlington Street
Newburyport, MA 01950
smbaldwin@comcast.net

Elise Goldblat, DAG
Division of Law
124 Halsey Street, 5th fl.
Newark, NJ 07101
elise.goldblat@law.dol.lps.state.nj.us

Jeff Slutzky, DAG
Division of Law
124 Halsey Street, 5th fl.
Newark, NJ 07101
jeff.slutzky@law.dol.lps.state.nj.us

Todd Steadman, DAG
Division of Law
124 Halsey Street, 5th fl.
Newark, NJ 07101
Todd.steadman@law.dol.lps.state.nj.us

Richard A. Chapkis, Vice President & General Counsel
Dawn Czapala
Verizon New Jersey Inc.
540 Broad Street, Floor 20
Newark, NJ 07102
Richard.chapkis@verizon.com

Sherry F. Bellamy, Vice President & Associate General Counsel
Verizon Corporate Services Corp.
1515 North Courthouse Road, Suite 500
Arlington, VA 22201
Sherry.f.bellamy@verizon.com

Robert P. Slevin, Associate General Counsel
Verizon Corporate Services Corp.
1095 Avenue of the Americas, Room 3824
New York, NY 10036
Robert.p.slevin@verizon.com

Marsha A. Ward, National Director-State Regulatory
Law & Public Policy
MCI, Inc.
6 Concourse Parkway, Suite 600
Atlanta, GA 30328
Marsha.ward@mci.com

James H. Laskey, Esq.
Norris, McLaughlin & Marcus, P.A.
721 Route 202-206
P.O. Box 1018
Somerville, NJ 08876-1018
Jhlaskey@nmmlaw.com

Michael McRae, Esq.
MCI
22001 Loudoun County Parkway
Ashburn, VA 20147
michael.mcrae@mci.com

Thomas W. Snyder, Esq.
Qwest Services Corporation
1801 California, Suite 1000
Denver, CO 80202
Tom.snyder@qwest.com

Barbara Brohl, Esq.
Qwest Services Corporation
1801 California, Suite 1000
Denver, CO 80202
Barbara.brohl@qwest.com

Yaron Dori, Esq.
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004
ydori@hhlaw.com

Olivia M. Farrar, Esq.
Hogan & Hartson L.L.P.
555 13th Street, N.W.
Washington, D.C. 20004
omfarrar@hhlaw.com

Martin C. Rothfelder, Esq.
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
mcrothfelder@rothfelderstern.com

Bradford M. Stern, Esq.
Rothfelder Stern, L.L.C.
625 Central Avenue
Westfield, NJ 07090
bmstern@rothfelderstern.com

Mark L. Mucci, Esq.
Saul Ewing LLP
One Riverfront Plaza
Newark, NJ 07102
mmucci@saul.com

Alan M. Shoer, Esq.
Director of Regulatory Affairs & Counsel
Conversent Communications of New Jersey, LLC
24 Albion Road, Suite 230
Lincoln, RI 02865
ashoer@conversent.com

Karly E. Baraga, Esq.
Kelley Drye & Warren, LLP
1200 19th street, N.W., Suite 500
Washington, D.C. 20036
kbaraga@kelleydrye.com

Harry M. Davidow, Esq.
Kelley Drye & Warren, LLP
101 Park Avenue
New York, NY 10178
hdavidow@kelleydrye.com

Andrea P. Edmonds, Esq.
Kelley Drye & Warren, LLP
1200 19th street, N.W., Suite 500
Washington, D.C. 20036
aedmonds@kelleydrye.com

Joseph Boyle, Esq.
Kelley Drye & Warren, LLP
200 Kimball Drive
Parsippany, NJ 07054
jboyle@kelleydrye.com